**CONTRACT FOR CONSTRUCTION**

**GENERAL CONDITIONS**

**ARTICLE 1 DEFINITIONS**

* 1. The Contract. The Contract for Construction (referred to herein as the “**Contract**”) is the sum of all Contract Documents. It represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification, as defined below. Any capitalized terms used in the Contract for Construction General Conditions, but not defined herein, shall have the meanings ascribed to those terms in the Agreement.
     1. The Contract Documents consist of those documents specified in Paragraph 1.2 of the Cost of Work Plus a Fee with a Guaranteed Maximum Price Agreement (the “**Agreement**”). The Contract Documents do not include bidding documents, such as the advertisement or invitation to bid, the instructions to bidders, sample forms, Contractor’s bid or portions of Addenda relating to any of the bidding documents.
     2. An “**Addendum**” is a written or graphic instrument issued by Owner prior to the execution of the Agreement which sets forth additions, deletions or other revisions to the Contract Documents or clarifications thereof.
     3. A “**Modification**” is:

1. a Change Order;
2. a Directive; or
3. a written amendment to the Contract signed by both parties A Modification may be made only after execution of the Agreement.
   * 1. A “**Change Order**” is a written Modification, the form of which is attached as Composite Exhibit “E,” executed by the authorized representatives of each party and consisting of additions, deletions or other revisions to the Contract. A Change Order may be accompanied by and/or may identify additional or revised Drawings, sketches or other written instructions which become and form a part of the Contract Documents by virtue of the executed Change Order. Except as otherwise provided in Section 1.1.5 of these General Conditions, a change in the Scope of the Work, the Contract Time or the Guaranteed Maximum Price shall become the subject of a Change Order.
     2. A “**Directive**” is a written Modification issued by Owner and consisting of additions, deletions or other revisions to the Contract or other written instructions issued by Owner with respect to the performance of the Work or the activities of Contractor and Subcontractors on the Job Site or the property of Owner. A Directive may include, but shall not be limited to, a bulletin, Directive or other orders or instructions. Directives may become the subject of a Change Order, either singularly or collectively. Directives shall become the subject of a Change Order if they involve a change in the Scope of the Work, the Contract Time, or the Guaranteed Maximum Price. Upon receipt of a Directive, Contractor shall promptly proceed with same regardless of any objection thereto. Directives issued by Owner which are not objected to in writing by Contractor within ten (10) calendar days of receipt shall be deemed signed and accepted by Contractor.
   1. Owner. Owner is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term “**Owner**,” whenever it appears in the Contract Documents, means Owner or Owner’s Representative (except as otherwise specified in the Contract Documents or as the context otherwise requires); provided, however, that with respect to any provisions of the Contract which require Contractor to indemnify Owner, to provide insurance for the protection of Owner or to release Owner from, or waive, any claims Contractor may have against it, the term “**Owner**” shall mean Owner and Owner’s Representative, and the related, affiliated and subsidiary companies of Owner and the owners, shareholders, members, managers, officers, directors, agents, employees and assigns of each and shall, to the extent applicable, include the parent, related, affiliated and subsidiary companies of Owner’s Representative and the owners, shareholders, members, managers, officers, directors, agents, employees and assigns of each.
   2. Owner’s Representative. Owner’s Representative is the person or organization designated from time to time by Owner to act as its representative and is identified in Article 3 of the Agreement or the most current amendment thereto. Except as otherwise provided in the Contract Documents and until Contractor is notified in writing by Owner to the contrary, all actions to be taken by, all approvals, notices, consents, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, Owner shall be taken, given and made by, or delivered or given to, Owner’s Representative in the name of and on behalf of Owner; provided, however, that Owner (and not Owner’s Representative) shall be solely obligated to Contractor for all sums required to be paid by Owner to Contractor hereunder. Owner’s Representative is referred to throughout the Contract Documents as if singular in number and neuter in gender. If Owner’s Representative is an organization then it shall, in turn, act through such person or persons as it may designate in writing from time to time. Only those so designated are authorized to grant on behalf of Owner any approval, consent, or waiver with respect to the Contract Documents or the Work or to otherwise act for Owner in any capacity whatsoever.
   3. The Architect/Engineer. The Architect/Engineer is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term “**Architect/Engineer**” means the Architect/Engineer or its authorized representative. The Architect/Engineer will have authority to act on behalf of Owner only to the extent explicitly provided for in the Contract Documents.
   4. The Contractor. Contractor is the person or organization identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term “**Contractor**” means Contractor, its project manager (or such other title used by Contractor to designate its on-site representative responsible for the performance of the Work with the express authority to bind Contractor with respect to all matters under this Agreement) and such other person or persons designated in writing to Owner from time to time by Contractor to act as its representative and who shall have the authority to bind Contractor. Contractor, upon ten (10) days’ written notice to Owner, shall so designate a sufficient number of representatives that there shall be at least one authorized representative on the Job Site at all times in which the Work is being performed. Contractor shall be lawfully licensed as required in the jurisdiction where the Project is located.
   5. Subcontractor; Sub-subcontractor.
      1. A “**Subcontractor**” is a person or organization having a direct contract with Contractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative thereof.
      2. A “**Sub-subcontractor”** is a person or organization having a direct or indirect contract with a Subcontractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Sub-subcontractor or an authorized representative thereof.
   6. The Job Site or Site. The “**Job Site**” or “**site**” shall mean the area in which the Work is to be performed and such other areas as may be designated by Owner for the storage of Contractor's materials and equipment.
   7. The Project. The “**Project**” is the total construction of [include description of the Project here] which the Work may be the whole or a part.
   8. Work; Contract Time; Contract Sum. The **Work**, the **Contract Time** and the **Contract Sum** are as defined in Articles 2, 5, and 6, respectively, of the Agreement.
   9. Plans. Wherever the words “**Plan**” or “**Plans”** are used in the Contract Documents, they shall be construed as having the same meaning as Drawing or Drawings. “**Drawing**” or “**Drawings**” shall mean the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams, described as part of Composite Exhibit “D”.
   10. Specifications. The “**Specifications**” are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work and performance of related services attached as part of Composite Exhibit “D”.
   11. Turnover Date(s). “**Turnover Date(s)**” shall mean the date(s) Contractor shall have completed the Work, or the designated portion thereof in accordance with Paragraph 5.2 and 5.3 of the Agreement and as reflected in the approved Milestone Schedule (defined in Paragraph 2.2 of the Agreement) and set forth in Composite Exhibit “A” – Attachment #5.
   12. Recovery Schedule. “**Recovery Schedule**” shall mean a schedule, meeting all requirements of Article 8 of the General Conditions, generated by Contractor and which shall identify the correction, acceleration or extraordinary efforts to be taken by Contractor and its work forces to recapture the contract Milestone Dates.
   13. Final Completion. “**Final Completion**” shall mean the date Owner issues a written Final Acceptance of the Project in its entirety.
   14. Mock-Ups. A “**Mock-Up**” shall mean a model, either full size or to scale, of a construction system or assembly used to evaluate and analyze construction details, strength, coordination, and appearance.
   15. Substitution. A “**Substitution**” shall mean a product, material, or piece of equipment offered in place of that specified or required by the Contract Documents.
   16. Applicable Law. “**Applicable Law**” shall mean applicable federal, state, county and city statutes, provisions of constitutions, laws, safety regulations, codes (including, without limitation, Building Codes), ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or with any other governing bodies having jurisdiction over the Project, and all orders and decrees of all courts and arbitrators.
   17. Exhibits. The following Exhibits are attached to the Agreement and made a part of the Contract by this reference:

Composite Exhibit “A”—Scope of Work

Attachment 1—List of Contract Documents

Attachment 2—Clarifications and Qualifications

Attachment 3—Alternates

Attachment 4—Allowances

Attachment 5—Milestone Schedule

Attachment 6—TBD

Attachment 7—Administrative and Supervisory Personnel

Composite Exhibit “B”—Schedule of Values

Composite Exhibit “C”—Insurance Requirements

Composite Exhibit “D”—Plans, Drawings (to also be provided electronically by Owner to Contractor formatted in CAD) and Specifications and Supplemental Contract Documents

Composite Exhibit “E”—Administrative Reporting Forms (Directive, Warranty, Change Order, Lien Waivers, Form of Contractor’s Sworn Statement)

Exhibit “F”—Form of Bond (not applicable)

Exhibit “G”—Progress Schedule

Exhibit “H”—General Conditions Items

**ARTICLE 2**

**THE CONTRACT DOCUMENTS**

* 1. Execution, Intent, and Interpretations.
     1. Contractor warrants and represents that, in executing the Agreement and undertaking the Work, it has not relied upon any oral inducement or representation by Owner, Owner’s Representative, the Architect/Engineer or any of their officers or agents as to the nature of the Work, the Project conditions or otherwise.
     2. The intent of the Contract Documents is to include all items necessary and reasonably inferable for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by anyone shall be as binding as if required by all. The Contract Documents are intended to require complete building systems that function as designed or as per industry standards, whichever is more stringent, and are not meant to indicate just individual components. Any interrelated work that is reasonably inferable from the Contract Documents or that is generally or customarily recognized as being required is included, even if not specifically indicated in the Contract Documents. If the Contract Documents do not specifically allow Contractor a choice as to quality or cost of items to be furnished, but could be interpreted to permit such choice, they shall be construed to require Contractor to furnish the highest degree of safety, most stringent requirement regarding the affected material, equipment, or Work, and the best quality and most expensive items within the allowed budget and consistent with the general nature and finish level of the Project. Words and abbreviations which have well- known technical, construction, or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
     3. In the event there is a discrepancy between the various Contract Documents, the hierarchal order shall be as follows, with the lower numerical value being the higher priority:

1. Executed Change Orders (including Directives) to the Contract Documents incorporated into this Contract;
2. Clarifications and Qualifications;
3. Shop Drawings and Submittals
4. The Agreement between Owner and Contractor
5. All remaining Exhibits to the Agreement between Owner and Contractor, as amended, with the exception of Drawings and Specifications;
6. Addenda, with those of later date having precedence over those of earlier date;
7. General Conditions for Contract for Construction
8. Drawings
9. Specifications. (the Drawings and Specifications, which are complementary, shall be evaluated together to determine the reasonable intent therein.)

If there are any conflicts, discrepancies, or inconsistencies between the Construction Documents or between the Construction Documents and Applicable Law, Contractor shall immediately notify Owner and Architect/Engineer in writing.

* + 1. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings, are not intended to influence Contractor in its division of the Work among Subcontractors or its establishment of the extent of the Work to be performed by any trade.
    2. Contractor shall submit a written request for information (“**RFI**”) in electronic format to Architect/Engineer with a copy to Owner for any interpretations necessary for the proper execution or progress of the Work. Such interpretations or responses to RFI’s shall be issued in writing, and Contractor should anticipate and plan for an approximate ten (10) business days unless otherwise agreed to in writing by the Architect/Engineer for a response to any RFI.
    3. Contractor shall inspect the Job Site and conduct any tests or surveys it deems necessary or desirable prior to the commencement of the Work. Contractor shall also accept full responsibility for any loss sustained by it as a result of any conditions which are reflected in the Contract Documents or are usual in nature or ordinarily encountered and generally recognized as inherent in the work of the location and character provided for in the Contract Documents. The Guaranteed Maximum Price shall in no event be increased by reason of any condition which is reflected in or reasonably inferable from the Contract Documents or is a condition which is not unusual in nature and which does not differ materially from those ordinarily encountered and generally recognized as inherent in the Work of the location and character provided for in the Contract.
    4. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents and (2) which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than seven (7) calendar days after first observance of the conditions. The Architect/Engineer will promptly investigate such conditions and, if they differ materially from those that Contractor should have accounted for based on the information made available to Contractor prior to the execution of the Agreement (including the assessments set forth in Paragraphs 14.1(e) and (f) of the Agreement and a thorough visual inspection of the site) and such conditions cause an increase or decrease in Contractor’s time required for performance of any part of the Work, the Architect/Engineer will recommend an equitable adjustment in the Contract Time (but in no instance shall Contractor be entitled to an adjustment to the Guaranteed Maximum Price). If the Architect/Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents or from those that Contractor should have accounted for based on the information made available to Contractor prior to the execution of the Agreement (including the assessments set forth in Paragraphs 14.1(e) and (f) of the Agreement and a reasonably thorough visual inspection of the site) and that no change in the terms of the Contract is justified, the Architect/Engineer shall so notify Owner and Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within twenty-one (21) calendar days after the Architect/Engineer has given notice of the decision or such claim shall be deemed waived. If Owner and Contractor cannot agree on the adjustment in the Contract Time, the adjustment shall be referred to the Architect/Engineer for determination, which, if not agreed upon, shall be settled through the dispute resolution provisions of the Agreement. No adjustment in the Contract Time shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by (i) Contractor’s prior thorough visual inspections, tests, reviews or preconstruction services for the Project, or (ii) inspections, tests, reviews or preconstruction services that Contractor had the opportunity to make or reasonably should have performed in connection with the Project. Contractor hereby acknowledges that Contractor shall not have any right to and Owner will not consider any requests for an increase in the Contract Time that is not submitted in compliance with the foregoing requirements.
  1. Copies Furnished Ownership.
     1. Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, one (1) digital copy of the Agreement, the General Conditions, the Drawings, the Specifications, the Addenda and the Modifications, as requested by Contractor. Owner shall provide Drawings electronically in CAD format to Contractor.
     2. All Contract Documents furnished by Owner or the Architect/Engineer are and shall remain Owner’s property. Neither Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents, and Owner will retain all common-law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). They are not to be published or used by Contractor on any other project and, with the exception of one complete set for Contractor for so long as any applicable warranties are in effect (and thereafter, that set shall be promptly returned to Owner), are to be returned to Owner upon completion of the Work. Drawings, Specifications and other similar or related documents and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of Owner. Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other similar or related documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other similar or related documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of any copyright or other reserved rights.
     3. Owner shall also own and have the right to use all drawings, designs, specifications, notes and other design works developed directly by Contractor or its Subcontractors and Sub-subcontractors in the performance of the Work (the “Design Documents”) and the ideas and designs contained therein (including any design/build Work documents, shop drawings, wiring diagrams, process control and instrumentation drawings and equipment drawings) in connection with Owner’s, use, maintenance and repair of the Project and for additions, alterations or future construction to the Project, without paying Contractor (or any Subcontractor or Sub- subcontractor) any compensation other than such amounts as are due to Contractor under this Agreement. By its execution of the Agreement, Contractor consents to Owner’s transfer of ownership and the right to use the Design Documents to any assignee of Owner. Contractor shall cause all Subcontractors and Sub-subcontractors performing design services to deliver instruments satisfactory to Owner confirming Owner’s rights under this Section 2.2. Notwithstanding the foregoing, however, Owner agrees that Contractor and its Subcontractors or Sub-subcontractors, as applicable, shall continue to own the underlying design concepts set forth in such drawings, designs, specifications, notes and other works, and shall have the right to use such concepts in connection with the design and construction of other projects without Owner’s consent
  2. No Waiver. The provisions of the Contract cannot be amended, modified, varied, or waived in any respect except by a writing signed by Owner identifying the provision(s) being waived and Owner’s intent to waive same. Contractor is hereby given notice that no person has authority to orally waive, or through their actions or omissions waive, or to release Contractor from, any of Contractor’s duties or obligations under or arising out of the Contract. Any waiver, approval or consent granted to Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve Contractor of the obligation to obtain any future waiver, approval or consent.
  3. Copies of Correspondence. Whenever Contractor is required to submit to the Architect/Engineer any correspondence, documentation or to report any other information about the Work which affects costs, scheduling or quality of the Work, such correspondence, documentation or reports shall be submitted in writing and Contractor shall simultaneously forward a copy of same to Owner. Furthermore, whenever the Contract Documents require the Architect/Engineer’s approval as to any aspect of the Work or any matter involving the Project, the Architect/Engineer’s decision shall be contingent upon Owner’s written approval of such matter, and Contractor and the Architect/Engineer shall be bound by such decision and shall carry out the Work accordingly.

**ARTICLE 3**

**OWNER**

* 1. Easements. Owner shall obtain and pay for any easements required for permanent structures.
  2. Access. Owner, Architect, and Lender (as defined in Section 16.2.3) and their respective employees, agents, consultants, Owner Responsible Parties (as defined in Article 5 of the Agreement), and other invitees, shall at all times have access to the Work at each and every stage of preparation and progress. Contractor shall provide facilities for such access.
  3. Limitations on Responsibility. Neither Owner nor any Owner’s representatives shall be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs, in connection with the Work. Further, neither Owner nor any Owner representative shall be responsible for the acts and omissions of Contractor, or any of its Subcontractors, or Sub-subcontractors, or any of their respective agents or employees or any other persons performing any of the Work. Furthermore, any information furnished to Contractor in connection with the site shall not relieve Contractor from its duties under the Contract Documents. Neither Owner nor any other party shall be required to furnish Contractor with any information concerning subsurface characteristics or conditions of the areas where the Work is to be performed. When Owner or any other person or entity has made investigations of characteristics or conditions of the site, such investigations were made solely for the purposes of Owner’s study and the Architect/Engineer’s initial design. Neither such investigations nor records thereof are a part of the Contract Documents. To the extent such investigations or records are made available to Contractor, such information is furnished solely for the convenience and knowledge of Contractor and shall not relieve Contractor from its responsibility under the Contract Documents. Neither Owner nor Architect/Engineer assumes any responsibility whatsoever in respect of the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by Owner, Architect/Engineer, or any third party in its use thereof, and there is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations or records are representative of those existing throughout the site or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. Contractor shall be solely responsible for locating (and shall locate prior to performing any Work, including, in particular, any excavation work) all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines.
  4. General. The foregoing is in addition to all other rights, privileges, duties, and responsibilities of Owner enumerated in the Contract Documents.

**ARTICLE 4**

**ARCHITECT/ENGINEER**

* 1. Contractual Relationships. Nothing contained in the Contract Documents shall create any contractual relationship between the Architect/Engineer and Contractor. The Architect, however, shall be entitled to performance and enforcement of obligations under the Agreement intended to facilitate performance of the Architect/Engineer’s duties.
  2. Job Site Visits. At Owner’s election, the Architect/Engineer shall visit the Job Site at intervals appropriate to the stage of construction to familiarize itself generally with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. On the basis of its on- site observations, the Architect/Engineer shall keep Owner informed of the progress of the Work and shall endeavor to guard Owner against defects and deficiencies in the Work of Contractor. The Architect/Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
  3. Limitations on Responsibility. The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs, in connection with the Work. The Architect/Engineer shall not be responsible for the acts or omissions of Contractor, any Subcontractors, any of their respective agents or employees or any other persons performing any of the Work. The Architect/Engineer will not be responsible for Contractor’s failure to perform Work in accordance with the requirements of the Contract Documents.
  4. Access. The Architect/Engineer shall at all times have access to the Work, at each and every stage of preparation and progress. Contractor shall provide facilities for such access so that the Architect/Engineer may perform its functions under the Contract Documents.
  5. Delegation. Owner may delegate to the Architect/Engineer the review of Shop Drawings and Samples, the ordering and/or observation of tests, inspections or approvals, the review and/or approval of substitutions, the ordering of uncovering of the Work or any portion thereof, the rejection of the Work or any portion thereof and/or such other functions as Owner may, from time to time, deem appropriate. At Owner’s written request, Architect/Engineer shall prepare Change Orders and Directives.
  6. Decisions by Architect/Engineer. Except as otherwise provided in Section 13.4, any claims, disputes and other matters in question between Contractor and Owner relating to the interpretation of plans and specifications and artistic effect may be referred at Owner’s sole discretion to the Architect/Engineer for its decisions in which event the Architect/Engineer’s decision shall be conclusive and binding on the parties only with respect to the continuance of the Work, but shall not be binding or conclusive as to how such claim or dispute affects the Cost of the Work.
  7. The Architect/Engineer may recommend rejection of Work that does not conform to the Contract Documents. Whenever the Architect/Engineer considers it necessary or advisable, the Architect/Engineer recommend to Owner requiring inspection or testing of the Work, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect/Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect/Engineer to Contractor, Subcontractors, Sub-Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.
  8. Shop Drawings, Product Data and Samples.
     1. “**Shop Drawings**” are drawings, diagrams, schedules, and other data specially prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
     2. “**Product Data**” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
     3. “**Samples**” are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
     4. The Architect/Engineer will review and approve or take other appropriate action upon Contractor’s submittals such as Shop Drawings, Product Data and Samples, as well as Mock-Ups, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect/Engineer’s or Owner’s review and approval of submittals shall not relieve Contractor or the Subcontractors and Sub-subcontractors from complying with the plans and specifications. Any change or substitution from the Contract Documents contained in the submittals must be specifically marked and identified in a conspicuous manner in the submittal or the letter transmitting same. Architect/Engineer’s action will be taken in accordance with the Submittal Schedule approved by Architect/Engineer or, in the absence of an approved Submittal Schedule, with reasonable promptness while allowing sufficient time (in the Architect/Engineer’s professional judgment) to allow for an adequate review. The Architect/Engineer’s review will be performed on a priority of submittal basis as governed by the critical path of the Work depicted on the controlling Progress Schedule for the Project. Should Contractor believe that a submittal for Work not depicted on the critical path should take priority, Contactor shall alert Architect/Engineer and Owner of this belief in writing with an explanation of why the submittal should take priority. In any event, Contractor shall submit an updated and accurate submittal log at each OAC meeting clearly showing submittals requiring review within the next twenty (20) business days taking into account the critical path of the Work depicted in the controlling Progress Schedule and allowing sufficient time for procurement. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment systems, all of which remain the responsibility of Contractor as required by the Contract Documents. The Architect/Engineer’s review of Contractor’s submittals shall not relieve Contractor of any other obligations under the Contract Documents and Contractor shall have an affirmative responsibility to review the submittals for conformance with the plans and specifications and other Contract Documents, to detect deviations and substitutions from the Contract Documents as required herein, and to endeavor to prioritize the submittals based on the overall sequence of Work for the Project. The Architect/Engineer’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. The Architect/Engineer’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.
  9. General. The foregoing is in addition to all other rights, privileges, duties, and responsibilities of the Architect/Engineer enumerated in the Contract Documents.

**ARTICLE 5**

**CONTRACTOR**

* 1. Review of the Contract Documents.
     1. If Contractor or their Subcontractor or Sub-Subcontractor observes that portions of the Contract Documents are at variance with Applicable Laws, Contractor shall promptly notify the Architect/Engineer and Owner in writing and necessary changes shall be accomplished by appropriate modification. If Contractor performs any Work knowing it to be contrary to such Applicable Laws, without such notice to the Architect/Engineer and Owner, Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto, including, without limitation, all fines imposed by governmental authorities and the costs of bringing the Work in compliance with Applicable Law, statute, ordinance, building code, rule or regulation.
     2. Contractor shall, prior to commencement of the Work and continuously throughout the performance thereof, carefully study and compare the Contract Documents and immediately report in writing to Owner and Architect/Engineer any error, inconsistency, discrepancy, ambiguity, omission, insufficiency of detail or explanation or variance with physical conditions on the Job Site, including any problem which may preclude proper performance of a complete system with the required characteristics of that system(all or any of which are hereinafter referred to as an “**error in the Contract Documents**”) it should have reasonably discovered. Owner shall thereafter give appropriate written instructions to Contractor, and such instructions shall be final. Nothing in this provision should be construed to impose on Contractor the design duties, standard of care, or obligations of Owner’s design professionals.
     3. Should Contractor fail to report in writing an error it should have reasonably discovered in the Contract Documents or, having reported the same, fail to wait for Owner’s instructions as aforesaid prior to proceeding with the Work, then any Work performed by or on behalf of Contractor, directly or indirectly, after its discovery of an error in the Contract Documents shall be at Contractor’s own risk and expense, and Contractor shall be liable for all damages and corrective action resulting therefrom (including, without limitation, all fines imposed by governmental authorities and the costs of bringing the Work in compliance with Applicable Law, statute, ordinance, building code, rule or regulation). Further, any Defective Work (as defined under Section 5.4) performed by or on behalf of Contractor, directly or indirectly, as a result of an undiscovered error in the Contract Documents which Contractor should have reasonably discovered by carefully studying and comparing the same shall be at Contractor’s own risk and expense, and Contractor shall be liable for all damages and corrective action resulting therefrom. Nothing in this provision should be construed to impose on Contractor the design duties, standard of care, or obligations of Owner’s design professionals.
     4. Contractor shall carefully study and compare the Contract Documents and shall at once report to the Architect/Engineer and Owner’s Representative any error, inconsistency or omission that may be discovered. Contractor shall be liable to Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to Applicable Laws, to the extent Contractor recognized (or, based on the standards of performance ordinarily provided by general contractors working under the same or similar conditions, should have recognized) such error, inconsistency, omission or difference and failed to report it to (and obtain direction from) Owner and Architect/Engineer prior to proceeding with the affected Work. Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work. Nothing in this provision should be construed to impose on Contractor the design duties, standard of care, or obligations of Owner’s design professionals.
     5. Contractor shall coordinate construction to assure efficient and orderly installation of each part of the Work and coordinate operations included under different sections that depend on each other for proper installation, connection, and operation. Contractor shall prepare coordination drawings to facilitate the efficient installation of products and materials and where limited space necessitates maximum coordination and cooperation. Contractor shall coordinate and hold weekly (or with such other frequency agreed to by Owner) jobsite meetings with the Architect, Owner and representatives of such Subcontractors and suppliers as Contractor or Owner may deem advisable, for the purpose of: (a) reviewing status of the Work, (b) the progress of the Work as compared to the most recent Milestone Schedule, (c) responses to submittals and requests for information, (d) proposed and pending Change Orders and Directives, (e) Applications for Payment, (f) and other items relevant to the Project. Contractor shall prepare an agenda for each such meeting and deliver the agenda in advance of the meeting and, after the meeting, shall prepare minutes of the meeting and deliver such minutes to Owner and the Architect/Engineer with reasonable promptness after the meeting.
     6. The obligations of Contractor to correct any Defective Work resulting from its failure to so report an error in the Contract Documents, to wait for Owner’s instructions prior to proceeding with the Work or to discover an error in the Contract Documents which it should have discovered through due diligence shall survive the expiration or termination of the Agreement.
     7. Any portion of the Work performed by Contractor without Contract Documents or without approved Shop Drawings or Samples, where required, shall be at Contractor’s own risk.
     8. By executing the Agreement Contractor represents the following: the Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are consistent with: (i) good and sound practices within the construction industry, (ii) generally prevailing and accepted industry standards applicable to the Work; (iii) requirements of any warranties applicable to the Work; and (iv) Applicable Laws that bear upon Contractor’s performance of the Work. Contractor shall not be required to provide professional services that constitute the practice of law, architecture, engineering, or design services unless such services are specifically required by the Contract Documents for a portion of the Work and specifically set out in the Contract Documents or unless Contractor needs to provide such services in order to carry out Contractor’s responsibilities for construction means and methods, techniques, sequences, and procedures. Nothing in this provision should be construed to impose on Contractor the design duties, standard of care, or obligations of Owner’s design professionals that would otherwise be in violation of Applicable Law.
  2. Supervision and Construction Procedures.
     1. Contractor shall supervise and direct the Work, using its best skills and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures, and for all safety precautions and programs, in connection with the Work as well as for coordinating all portions of the Work. Contractor shall cause the project manager or superintendent to maintain a daily log describing the Work completed and describing such other pertinent information, as may be requested by Owner, each day until the Final Completion date occurs (the “**Daily Log**”). Daily logs shall be submitted to Owner at each scheduled Owner Architect/Engineer Contractor (“**OAC**”) meeting.
     2. Contractor shall employ a competent project manager (herein sometimes referred to as the “**project manager**”), a competent superintendent (herein sometimes referred to as the “**superintendent**”) and necessary assistants who shall be in attendance at the Job Site during the progress of the Work and who, at all times, shall be satisfactory to Owner, in its sole discretion. Neither the project manager nor the superintendent, nor any other “Key Personnel” member of Contractor’s staff identified in Attachment 7 of Composite Exhibit “A” attached to the Agreement shall be changed, except with the consent of Owner, unless the project manager or the superintendent or other Key Personnel member, as the case may be, proves to be unsatisfactory to Contractor or ceases to be in its employ. The project manager and the superintendent shall represent Contractor, and all communications given to the project manager or the superintendent shall be binding as if given to Contractor. In the event Contractor’s project manager, superintendent or assistants or other Key Personnel members prove to be unsatisfactory to Owner, then Owner may direct Contractor to replace some or all of said individuals upon ten (10) days’ prior written notice.
     3. Contractor shall be responsible to Owner for the acts and omissions of its employees. It shall also be responsible to Owner for the acts and omissions of its Subcontractors and Sub-subcontractors, their respective agents and employees, and of other persons performing any of the Work, in the same manner as if they were directly employed by Contractor.
     4. Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of Owner, Owner’s Representative or the Architect/Engineer in their administration of the Contract or by inspections, tests or approvals required or performed under Section 5.7 herein by persons other than Contractor.
     5. Further, neither party shall be relieved of its obligations under the Contract Documents pending the determination of such dispute, controversy, or other question. If there should be a dispute regarding payment, Contractor shall continue work notwithstanding the existence of such dispute.
        1. Contractor acknowledges and agrees that the mere submission of a claim or change order request (“**COR**”) by Contractor does not entitle Contractor to any increase in the GMP or to any extension of the Contract Time, and does not entitle Contractor to stop, suspend or slow down any portion of the Work based upon such submission, and that Owner fully reserves all of Owner’s rights and positions with respect to any claim or COR submitted by Contractor and that notwithstanding the submission of a claim or COR, Contractor shall proceed diligently and promptly to prosecute and perform all Work involved with or affected by any claim or COR submitted by Contractor (and shall implement and follow any directions or instructions given by Owner in connection therewith), even if Owner does not agree that the Work that is the subject of the claim or COR constitutes a change to the Work required by this Contract and/or does not agree that the claim or COR entitles Contractor to any increase in the GMP and/or extension of the Contract Time and/or does not agree as to what increase and/or extension is required thereby. If Owner does not agree with a claim or COR submitted by Contractor, Contractor may make a claim as permitted by the provisions of this Contract and Contractor agrees that its sole and complete remedy with respect to any successful claim (including but not limited to claims based on changes to the Work, changed conditions or Delay) shall be, at a maximum, and to the extent permitted by applicable provisions of the Contract Documents, the actual demonstrated increased Cost of the Work plus Contractor's earned Fee, if any, incurred by Contractor as a result of the occurrence or condition giving rise to the claim (calculated pursuant to the applicable provisions of this Contract). This amount shall be considered inclusive of all delay, acceleration, impact, or other costs allegedly incurred as a result of such occurrence or condition and no additional damages or costs shall be recovered by Contractor.
     6. If any of the Work is required to be inspected or approved by any local, county or state public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by Owner or Architect/Engineer hereunder shall be a waiver of any of Contractor’s obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.
     7. Where required in the Contract Documents, Contractor shall comply with and shall be responsible for insuring that Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, Contractor or any of its Subcontractors comply with all Applicable Laws. Without limitation of the foregoing, Contractor shall comply with the *Immigration and Control Act of 1986*, as applicable to Contractor, including all required employment and identity verification procedures and record keeping requirements.
     8. Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. All labor, material and equipment required to provide and maintain controls for the duration of the Project including those associated with traffic control (including all signage, street, sidewalks barriers and fencing), storm water and pollution controls shall be supplied and paid for and maintained by Contractor.
  3. Materials and Equipment.
     1. Contractor shall, if so directed by Owner, cause any or all materials and equipment to be manufactured in advance and/or to be warehoused either at the factory or elsewhere. Contractor shall cause all materials and equipment to be delivered to the Job Site either: (a) in accordance with any schedule or schedules therefor established from time to time by Owner; (b) if a schedule is not so established by Owner, within three (3) days of directions to that effect from Owner; or (c) if no directions are given, in a manner which will assure the timely progress and completion of the Work but still not encumber the Job Site unreasonably, it being understood and agreed that Contractor shall not be relieved of its obligations to perform and complete the Contract in a timely manner if Owner fails to establish schedules or give directions as aforesaid. Materials delivered to the Job Site for incorporation in the Work shall not be removed from the Job Site without the consent of or unless directed by Owner. Owner shall not pay for offsite stored materials unless agreed to in advance in Owner’s sole discretion.
     2. Owner may within reason, from time to time during the performance of the Work and without any liability or obligation whatsoever to Contractor or any of its Subcontractors or Sub-subcontractors, direct Contractor to relocate, or cause to be relocated, to any other location on the Job Site, as designated by Owner, any materials, equipment, office or storage trailers, storage sheds or the like brought onto Owner’s property by Contractor or any of its Subcontractors or Sub-subcontractors, with which directions Contractor shall promptly comply. Should such relocation not be completed within the time established by Owner, Owner may accomplish such relocation at Contractor’s cost and offset the cost against any amounts then or thereafter due to Contractor. Contractor must receive written authorization from Owner for any signage or advertising on the Project, which authorization shall be at the sole discretion of Owner.
     3. If Owner requires, Contractor shall give, or shall require its suppliers or the manufacturers to give, full and accurate information in writing to Owner on any questions concerning the kind and quality, performance and/or delivery status of any materials and equipment, or such other data with respect thereto as may be requested by Owner, and shall obtain for Owner the written assurances of a manufacturer that its material and/or equipment is designed and appropriate for the use intended. These assurances do not relieve Contractor of liability.
  4. Warranty. Contractor warrants to Owner that all materials and equipment furnished under the Contract shall be new unless otherwise specified, and that all materials, equipment and Work shall be of good and workmanlike and high quality, free from faults and defects and in conformance with the Contract Documents. For purposes of this Agreement, all Work not so conforming to these standards, including substitutions not properly authorized or approved, may be considered “**Defective Work**.” Upon Owner’s request, Contractor shall deliver a warranty certificate in the form attached to Composite Exhibit “E,” modified as necessary to accurately include all warranties required by the Contract Documents and Applicable Law (the “**Warranty Certificate**”). If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

5.4.1 Contractor’s warranties given herein are in addition to and not in derogation of such longer warranties as may be provided by Contractor’s Subcontractors, suppliers and the manufacturers of equipment and materials incorporated into the Project. Contractor represents that all manufacturer and supplier warranties shall run directly to or be specifically assignable to Owner and shall be transferable to any purchaser of the Project. Contractor warrants that all portions of the Work that will be covered by a manufacturer’s or supplier’s warranty shall be performed in such a manner so as to preserve all rights under such warranties. Contractor hereby assigns to Owner, effective upon Substantial Completion of the entire Work or any earlier termination of this Contract, all manufacturer’s and supplier’s warranties relating to the Work, and Contractor shall execute any document reasonably requested by Owner to effectuate such assignment. Upon completion of the Work, as a condition to final payment, Contractor shall deliver to Owner all such warranty documents. If Owner attempts to enforce a claim based upon a manufacturer’s or supplier’s warranty and such manufacturer or supplier refuses to honor such warranty based, in whole or in part, on a claim of defective installation by Contractor, Contractor shall be responsible for any resulting loss or damage incurred by Owner as a result of the manufacturer’s or supplier’s refusal to honor such warranty. Contractor’s obligations under this Section 5.4 shall survive the expiration or earlier termination of the Contract.

5.4.2 Contractor is responsible for any Subcontractor’s nonperformance of warranty Work. The refusal of a Subcontractor or supplier to correct Defective Work for which it is responsible will not excuse Contractor from performing under Contractor’s warranty. Acceptance of possession, use, or occupancy of the Project and payment for Work shall not be deemed to constitute a waiver of the duties, obligations, or warranties of Contractor.

* 1. Taxes, Fees and Licenses, Permits, Royalties and Patents.
     1. Contractor shall pay, or cause to be paid, all sales, consumer, use, excise and other taxes enacted (whether or not effective or merely scheduled to go into effect) at the time the Contract was executed and required to be paid in connection with the Work or upon materials, tools or equipment brought to the Job Site or used in the Work, and all ad valorem personal property taxes levied against any tools or equipment utilized by Contractor or its Subcontractors or Sub-subcontractors in the performance of the Work, including, without limitation, all taxes, withholdings, contributions and/or premiums payable in respect of its employees or on its operations, including under workers’ compensation laws, unemployment compensation laws, the *Federal Social Security Act*, health and welfare benefit plans, gross business taxes, sales and use taxes and any other taxes, contributions and/or premiums which are payable by the employees, all of which shall be deemed included in the Cost of the Work.

If any of the foregoing taxes are not paid in a timely manner, Owner may withhold the amount of any such taxes from any amounts owing to Contractor under the Contract Documents, submit the amount so withheld to the appropriate taxing authority on behalf of Contractor and credit said amount against the Cost of the Work.

* + 1. Contractor shall secure and pay for all governmental fees, permits and licenses required by the Work, except the following, which shall be secured and paid for directly by Owner: general building permit fee (not including subcontractors’ or trade permit fees, regardless of whether the Subcontractor or trade permits and fees are included within the general building permit), impact fees, tapping and meter fees, and threshold inspections, fees to bring utilities to the site and fees for offsite utility work performed by others, including the applicable utility authorities. Deposits for temporary utilities to be paid by Contractor as part of the Cost of the Work. Deposits for permanent utilities are the responsibility of Owner. The parties agree that Owner does not control any utility and is in no way liable for the performance or non-performance of a utility and any delay resulting from such utility’s performance or non-performance shall not be a compensable delay under the Contract or otherwise.
    2. Contractor shall pay all royalties and license fees incident to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others, all of which shall be deemed included in the Cost of the Work. Contractor shall not unlawfully use or install any patented or copyrighted article and shall defend, indemnify and hold Owner harmless from and against all judgments, losses, costs or expenses, including attorneys’ fees, arising out of any suits or claims for infringement of any patent rights or copyrights.

In the event of any injunction or legal action arising out of any such infringement which has the effect of stopping the Work, Owner may require Contractor to substitute such other articles of like kind as will make it possible to proceed with and complete the Work.

* 1. Compliance with Laws. As to its means and methods of construction, scope of the Work and contractual obligations, Contractor shall comply with each and every federal, state and local law, ordinance, code, rule and regulation, as well as the lawful order or decree of any public or quasi-public authority, bearing on the performance of the Work, specifically including, but not limited to, the *Occupational Safety and Health Act of 1970*, as amended, the *Fair Housing Act*,as amended, the *Americans with Disabilities Act*, as amended, those specified in Section 10.1.2 and Applicable Laws. It shall be the responsibility of Contractor to familiarize itself with all of the same, and any performance of the Work by or on behalf of Contractor which is not in compliance therewith shall be at Contractor’s sole risk and expense. It shall be the further responsibility of Contractor to give all notices required to be given by it pursuant to Applicable Law. If Contractor fails to comply with or give any such notices, Contractor shall be liable for and shall indemnify and hold harmless Owner and the Architect, and their respective employees, officers and agents, against any resulting fines, penalties, judgment or damages, including attorneys’ fees, imposed on or incurred by the parties indemnified hereunder. Owner shall procure and obtain any and all bonds which might be required of Owner or Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. Any cash bonds for which Owner has paid shall be promptly returned to Owner upon refund by the municipality or by any other public or private body that required the bond. Contractor shall satisfy all requirements for return of any such cash bond and shall promptly seek return of such bonds on Owner’s behalf upon completion of the applicable Work.
  2. Inspection/Tests.
     1. If the Contract Documents or laws, ordinances, rules, regulations or orders of any public or quasi-public authority having jurisdiction or common practice in the industry require or dictate that Contractor have any portion of the Work inspected, tested or approved, Contractor shall advise Owner in a timely manner (in writing) of its readiness and of the date arranged so that Owner may observe such inspection, testing or approval.
     2. Owner may require any special inspection, testing or approval of the Work not included under Section 5.7.1 or any more stringent inspection, testing or approval thereof, in which event it shall instruct Contractor to order such inspection, testing or approval, and Contractor shall advise Owner in writing of the scope and cost of test required and the time impact to the critical path of the controlling Progress Schedule. If any inspection or testing reveals any failure of the Work to comply with the requirements of the Contract Documents, or if not addressed by the Contract Documents, the applicable industry standards, Contractor shall bear the costs of such inspection or testing and all costs to correct the Work to the satisfaction of Owner, including compensation for any additional Architect/Engineering services made necessary by such failure, the latter of which, if incurred by Owner, may be offset by Owner against any amounts then or thereafter due to Contractor. If such inspection or testing proves that the Work was performed properly, Owner shall bear the costs of such inspection or testing and any required restoration.
     3. Required certificates of inspection, testing, or approval by local, state, or federal government or regulatory agencies having jurisdiction shall be secured by Contractor and promptly delivered by it to Owner.
     4. Contractor shall maintain a record log on site of all tests and inspections performed by local, state or federal government or regulatory agencies having jurisdiction which shall be available for Owner’s inspection at all times and shall be turned over to Owner at the next OAC meeting unless otherwise directed by Owner. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.
  3. Use of Site.
     1. Contractor shall confine operations at the site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.
     2. Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in order to mark, protect and maintain all marked, identified or known public utilities such as fire lines and hydrants, electric, gas, water lines, sewer pipes, mechanical systems and all other items of this nature, and assume all responsibility and pay all costs for which Owner may be liable if said services are interrupted by actions of Contractor or subcontractors.
     3. Contractor shall bring and store on the Project site only materials and equipment which are to be used directly in the Work. After such equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other similar occurrences are solely the responsibility of Contractor. Contractor shall not erect or permit the erection of any sign on the Project site without the prior written consent of Owner, which consent may be withheld or revoked in Owner’s sole discretion. Contractor shall not, without Owner’s review and prior written approval, which approval may be withheld or revoked in Owner’s sole discretion, include any representation of the Project, photographs of the exterior or interior of the Project or references to the fact that Contractor is constructing the Project in Contractor’s promotional or advertising material.
     4. Contractor shall maintain streets and sidewalks around the Project site in a clean condition and shall comply with all erosion control and storm water runoff ordinances and regulations. Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon such areas. Should Contractor fail to satisfy the requirements of this Section 5.8.4, Owner may, but is not obligated to, self-perform consistent with its rights to do so under Section 7.2.5.
  4. General. The duties and responsibilities of Contractor as set forth in this Article 5 are in addition to, and not in lieu of, other duties and responsibilities of Contractor enumerated elsewhere in the Contract Documents.

**ARTICLE 6**

**SUBCONTRACTOR**

* 1. General. Nothing contained in the Contract Documents shall create any contractual relationship between Owner or the Architect/Engineer and any Subcontractor. Contractor, however, shall make Owner and Lender intended third party beneficiaries of each of Contractor’s subcontracts and purchase orders.
  2. Award of Subcontracts and Other Contracts for Portions of the Work. Contractor shall, prior to awarding any subcontract, notify Owner in writing of the names of all Subcontractors proposed for the several parts of the Work. Contractor shall also advise Owner in writing in which, if any, of said Subcontractors it has a financial interest and which of said Subcontractors, if any, has a financial interest in it, and the extent of such interest. No Subcontractor shall be engaged if objected to by Owner; provided, however, that if Owner does not take exception to a Subcontractor in writing within fifteen (15) days of its receipt of such notification, such Subcontractor shall be deemed acceptable to Owner. Owner’s approval or acquiescence of a Subcontractor shall not in any way relieve Contractor of any obligation owed to either Owner or Subcontractor. Copies of all bids or other proposals from subcontractors shall, upon request of Owner, be submitted to Owner. All Subcontractors shall be subject to the approval of any Lender.
  3. Subcontract Relations.
     1. All subcontracts shall be in writing. Each subcontract and sub-subcontract shall contain a reference to the Contract and shall incorporate the terms and conditions hereof to the full extent applicable to the portion of the Work covered thereby, including, without limitation, insurance provisions for the benefit of Owner and the Additional Insureds as provided in Composite Exhibit “C” – Insurance Requirements and indemnification provisions for the benefit of Owner and the other Owner Indemnitees as provided in Article 11 herein. Each Subcontractor must agree, for the intended benefit of Owner, to be bound by and to require each of its subcontractors to be bound by, such terms and conditions to the full extent applicable to its Work. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. At Owner’s request, Contractor shall deliver to Owner true and complete copies of all subcontracts with Contractor’s Subcontractors and (vi) that all warranties, bonds, indemnities and insurance coverage procured by Subcontractor under the subcontract shall include and run to the benefit of Owner, Lender and any successors and assigns of the Project and their respective agents employees, officers and assigns.

Each subcontract agreement shall also:

1. require the Subcontractor to perform its Work in accordance with the requirements and intent of the Contract Documents;
2. that Owner and Lender and any successors or assigns thereof are a third-party beneficiary of said subcontract;
3. that allow all rights and remedies available to Contractor in accordance with said subcontract or at law shall inure to the benefit of Owner, Lender or successors and assigns and that they shall have the right, but not the obligation, to exercise such rights and remedies, but that nothing in the Contract Documents will create a contractual relationship between Owner and a Subcontractor unless Owner elects to accept contingent assignment of the subcontract as provided in Section 6.3.4;
4. allow the Subcontractor’s services to be terminated by Contractor without penalty or premium if Contractor’s services are terminated;
5. require, at Owner’s option, the Subcontractor to continue to perform under the subcontract in the event Contractor’s services are terminated and Owner requests the Subcontractor to continue such performance (in which case Owner shall be liable only for Work subsequently performed);
6. require the Subcontractor to perform all of its Work in accordance with Applicable Laws without any adjustment to the subcontract amount or time for performance;
7. require that the Subcontractor shall be responsible and liable to Owner, Lender and any successors or assigns with respect to the Work and the Subcontract, in the same manner and to the same extent as if Owner, Lender and/or any successors or assigns of the Project were Contractor and specifically in this regard, that the Subcontractor shall be directly and fully liable and responsible to Owner, Lender and any successors and assigns of the Project for the quality, technical accuracy and completion of all Work performed by Subcontractor and for all errors, omissions, defects or deficiencies in such Work and that the Subcontractor’s responsibility and obligations for correction of Work that is not in accordance with the subcontract and/or is defective or deficient, shall run in favor of, and shall be enforceable directly by, Owner, Lender and any successors or assigns of the Project;
8. require the Subcontractor to carry and maintain insurance coverage in accordance with the Contract Documents, and to file certificates of such coverage with Contractor and upon Owner’s request to provide copies of such insurance policies, and, if not included in such policies, additional insured endorsements, to Owner;
9. waive all rights the contracting parties may have against one another or that the Subcontractor may have against Owner for damages caused by fire or other perils covered by the insurance described in the Contract Documents, except such rights as they have to proceeds of such insurance;
10. require the Subcontractor to indemnify Owner Indemnitees (as defined in Paragraph 14.4 of the Agreement) to the same extent as Contractor and name Owner and each of the Additional Insureds as an additional insured on all insurance policies;
11. include the termination and suspension provisions set forth in Article 15 of the Agreement and Article 15 of these General Conditions are included;
12. require the Subcontractor to resolve all disputes involving Owner in the same manner as provided in Article 16 of the Agreement;
13. require the Subcontractor to submit certificates and waivers of claims and liens for Work completed by it and by its lower tier subcontractors as a condition to the disbursement of the progress payment next due and owing;
14. require submission to Contractor of applications for payment in a form approved by Owner, together with clearly defined invoices and billings supporting all such applications;
15. require the Subcontractor to report, so far as practicable, unit prices and other feasible formula for use in the determination of costs of changes in the Work;
16. require the Subcontractor to furnish to Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein;
17. require the Subcontractor to allow Owner access to its books, records and other materials and to submit to an audit by Owner as set forth or contemplated in the Agreement (provided that Owner's right to review or audit records of Subcontractors under lump sum subcontracts shall be limited to the extent necessary to confirm adjustments to subcontract amounts or for any Work performed on a cost plus or time and materials basis); and
18. to the extent the Subcontractor performs engineering or other professional design services for the Project, require such engineering or other professional design services to be performed by qualified and licensed engineers.
    * 1. Contractor shall be responsible for all costs and expenses arising out of, and shall defend, indemnify and hold Owner harmless on account of, any failure by a Subcontractor or Sub-subcontractor to comply with the requirements of the Contract Documents (specifically including, without limitation, a failure to pay for labor or materials or to comply with the provisions of the union and/or trade agreements applicable to the Work).
      2. Owner may require Contractor to change any Subcontractor previously approved and, if at such time Contractor is not in default hereunder, the Guaranteed Maximum Price shall be increased or decreased by the difference in the cost occasioned by such change.
      3. Contractor hereby assigns to Owner (and Owner’s assigns) all its interest (but not its obligations) in any subcontract agreements and purchase orders now existing or hereinafter entered into by Contractor for performance of any part of the Work, which assignment will be effective only after termination of Contractor’s services for the Project and only as to those subcontract agreements and purchase orders that Owner accepts by written notice to Contractor and the applicable Subcontractor. Owner may accept said assignment at any time during the course of construction before final completion of the Work. Owner shall only be required to compensate the designated Subcontractors or suppliers for compensation accruing to such parties for Work done or materials delivered from and after the date on which Owner accepts the subcontract agreements or purchase orders. All sums due and owing by Contractor to the designated Subcontractors or suppliers for Work performed or material supplied prior to Owner's determination to accept the subcontract agreements or purchase orders shall constitute a debt between such parties and Contractor. All subcontract agreements and purchase orders shall provide that they are freely assignable by Contractor to Owner and assigns under the terms and conditions stated hereinabove. It is further agreed that such assignment is part of the consideration to Owner for entering into the Contract with Contractor and may not be withdrawn prior to Final Completion. Contractor shall deliver or cause to be delivered to Owner a written acknowledgment in form and substance satisfactory to Owner from each of its Subcontractors and suppliers of the contingent assignment described herein no later than ten (10) days after the date of execution of each subcontract agreement and purchase order. Upon such assignment to Owner under this Section 6.3.4, Owner may further assign the subcontract to a successor contractor or other entity. If Owner assigns the subcontract to a successor contractor or other entity who accepts assignment thereof, Owner shall be released from the obligations under the subcontract. In addition, Owner, prior to acceptance of assignment of the subcontract, may assign the subcontract to a successor contractor or other entity and upon acceptance of the assignment of the subcontract by such successor contractor or other entity, such contractor or other entity shall have the rights and obligations of Owner described under this Section 6.3.4 upon an acceptance of an assignment of the subcontract. In such event, the subcontract shall be deemed to have been directly assigned from Contractor to the successor contractor or other entity, and Owner shall have no liability thereunder.
    1. Payments to Subcontractors.
       1. Unless Owner otherwise agrees or the Contract Documents otherwise provide, Contractor shall pay each Subcontractor, upon receipt of payment from Owner, an amount equal to the amount paid by Owner to Contractor on account of such Subcontractor’s portion of the Work, less a percentage thereof equal to the percentage retained from payments to Contractor (which shall not be less than ten percent (10%)). Contractor shall also require each Subcontractor to make similar payments due to any Sub-subcontractor.
       2. Contractor shall pay each Subcontractor its proper share of any insurance monies received by Contractor under Article 11 herein, and it shall require each Subcontractor to make similar payments due to a Sub- subcontractor.
       3. Owner shall have no obligation to pay, or to see to the payment of, any monies to any Subcontractor or Sub-subcontractor except as may otherwise be required by law.

**ARTICLE 7**

**SEPARATE CONTRACTS**

* 1. Owner’s Right to Award Separate Contracts. Owner reserves the right to award other contracts in connection with the Project or other work on the Job Site on any terms and conditions which Owner may from time to time determine in its sole discretion.
  2. Mutual Responsibility of Contractors.
     1. Contractor shall afford other contractors and Owner reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work and shall properly connect and coordinate the Work with such other work. Owner and Contractor will mutually agree on dates to be included in the Original Progress Schedule, but Contractor shall cooperate and coordinate its work with other contractors at all times so as to avoid any delay or interference to any work. The cost of such cooperation scheduling and coordination shall be deemed to be included in the GMP and no direct or special payment or adjustment will be made therefor.

Owner and Contractor agree and acknowledge that regardless of what party is responsible for the installation of utilities (including, but not limited to, gas, electric, sewer, water, cable and communications) at the Project, Contractor is responsible for scheduling and coordinating such installation with Contractor’s Work.

* + 1. If the execution or result of any part of the Work depends upon any work of Owner or of any separate contractor, Contractor shall, prior to proceeding with the Work, inspect and promptly report to Owner in writing any apparent discrepancies or defects in such work of Owner or of any separate contractor that render it unsuitable for the proper execution or result of any part of the Work.

Failure of Contractor to so inspect and report shall constitute an acceptance of Owner’s or separate contractor’s work as fit and proper to receive the Work, except as to defects which may develop in Owner’s or separate contractor’s work after completion of the Work and which Contractor could not have discovered by its inspection prior to completion of the Work.

* + 1. Should Contractor cause damage to the work or property of Owner or of any separate contractor on the Project, or to other work on the Job Site, or delay or interfere with Owner’s or said separate contractor’s work, Contractor shall be liable for the same; and, in the case of another contractor, Contractor shall attempt to settle said claim with such other contractor prior to such other contractor’s institution of litigation or other proceedings against Contractor. Contractor shall promptly remedy damage that Contractor wrongfully causes to completed or partially completed construction or to property of Owner or Separate Contractor. If so requested by the parties to the dispute, Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of Owner shall be final and binding on the parties to the dispute. If such Separate Contractor sues Owner, Owner’s Representative and/or the Architect/Engineer on account of any damage, delay or interference caused or alleged to have been so caused by Contractor, Owner shall notify Contractor, who shall defend the foregoing in such proceedings at Contractor’s expense. If any judgment or award is entered against Owner, Owner’s Representative and/or the Architect/Engineer, Contractor shall satisfy the same and shall reimburse Owner, Owner’s Representative and/or the Architect/Engineer for all damages, expenses, attorneys’ fees and other costs incurred by them, or any of them, as a result thereof.
    2. Should a separate contractor cause damage to the Work or to the property of Contractor, Contractor shall present to said separate contractor any claims it may have as a result of such damage, (with an information copy to Owner) and shall attempt to settle its claim against said separate contractor prior to the institution of litigation or other proceedings against said separate contractor.

In no event shall Contractor seek to recover from Owner, and Contractor hereby represents to Owner, that Contractor will not seek to recover from Owner, any costs, expenses (including, but not limited to, attorneys’ fees) or losses of profit incurred by Contractor as a result of any damage to the Work or property of Contractor caused or allegedly caused by any separate contractor.

* + 1. If a dispute arises between Contractor and a separate contractor as to the responsibility for cleaning as required by the Contract Documents, Owner, after giving forty eight (48) hours’ written notice, may clean as required and charge the reasonable cost thereof to the responsible contractor (including Contractor), as determined by Owner, or apportion it among the several responsible contractors, as Owner shall determine to be just. Owner will include a provision in its contract(s) with the separate contractor(s) requiring the separate contractor(s) to provide cleanup of their work.
    2. Contractor acknowledges that the Project may include the installation, fixturing and related work by Separate Contractors with respect to certain systems, equipment, hardware, supplies and accessories to be supplied directly by Owner or such Separate Contractors (collectively, the “**Owner Supplied Items/FF&E**”). Contractor shall not be responsible for the purchase or delivery of Owner Supplied Items/FF&E. However, Contractor shall be responsible to coordinate with the applicable Separate Contractors with respect to Owner Supplied Items/FF&E and to establish rough-in locations and connections for Owner Supplied Items/FF&E to be installed, and to coordinate, for each component of Owner Supplied Items/FF&E, details pertaining and relevant to the requirements for the installation and assembly of Owner Supplied Items/FF&E and the connection to and relationship of such Owner Supplied Items/FF&E with any other equipment, systems or utilities included as part of Contractor’s Work that are to be connected to or used with Owner Supplied Items/FF&E so that Owner Supplied Items/FF&E can be assembled and installed, and incorporated into and connected with Contractor’s Work, in a safe, proper and complete manner. Contractor shall be responsible for any extra costs or time caused by Contractor’s establishment, commencement or setting of rough-in locations relating to Contractor’s Work without first coordinating with the applicable separate contractor (or for Contractor’s failure to comply with the related instructions provided by the applicable Separate Contractor) needed to fit and/or hook-up Owner Supplied Items/FF&E in such event, except that Contractor shall not be responsible for such costs (or for any failure to coordinate with the applicable separate contractor), if such changes or costs are caused by the failure of the applicable separate contractor to identify the applicable rough in work required to accommodate the applicable Owner Supplied Items/FF&E in a timely or accurate fashion. In the event Contractor believes that any rough-in location established pursuant to this Section 7.2 is inadequate or inappropriate to accommodate the applicable Owner Supplied Items/FF&E, Contractor shall notify Owner with reasonable promptness and, if requested, shall provide Owner with recommendations as to how to modify the rough-in locations to make the locations and rough-in adequate and appropriate.

#### ARTICLE 8

**TIME**

* 1. Definitions.
     1. Whenever the word “**day**” is used in the Contract Documents, it shall mean a calendar day unless otherwise specifically provided.

1. The Commencement Date of the Work shall be the date of issuance of the Notice to Proceed.
   * 1. Substantial Completion of the Work is defined at Paragraphs 5.2 and 5.3 of the Agreement.
   1. Progress and Scheduling.
      1. All times stated in the Contract Documents, including, without limitation, those for the commencement, prosecution and completion of the Work, including agreed upon Milestone Dates as reflected on Attachment 5 to Composite Exhibit “A,” and for the delivery and installation of materials and equipment, are of the essence of the Contract. By executing this Agreement, Contractor confirms that the Contract Time is a reasonable period of time for the performance of the Work.
      2. Contractor has provided to Owner and Architect/Engineer a schedule of performance of the Work in conformance with the format of the Progress Schedule defined in Sections 8.2.2 and 8.2.3, showing timely completion of the Work and timely achievement of each milestone date as required by the Contract for Construction and meeting all other requirements of this Article 8 (the “**Progress Schedule**”). The initial Progress Schedule is attached to the Agreement as Exhibit “G.” Within twenty-one (21) calendar days following Owner’s Notice to Proceed, Contractor shall provide to Owner and Architect/Engineer a proposed updated Progress Schedule. Owner may accept the proposed Progress Schedule as submitted, or reject, noting deficiencies. If such schedule is rejected, the deficiencies noted shall be corrected and a new proposed updated Progress Schedule shall be submitted within ten (10) calendar days. In any case, a complete updated Progress Schedule must be submitted by Contractor prior to any payments being made. If Owner elects to make payment before receiving an acceptable updated Progress Schedule, such action shall not constitute a waiver by Owner to withhold payment in the future pending receipt of a satisfactory updated Progress Schedule or required updates thereto. Once accepted by Owner, the Progress Schedule becomes the controlling Progress Schedule against which all progress shall be measured and updated as required herein. Thereafter, the controlling Progress Schedule and Milestone Schedule can only be changed via executed Chang Order. All schedules and updates are to be provided in print and electronic formats compatible with Owner’s computers and computer software.
      3. The Progress Schedule shall be in the form of a network using Critical Path Methodology (“**CPM**”), clearly showing construction activities, dependencies, and durations. The critical path activities shall be highlighted, float time for non-critical activities shall be shown and the start and stop dates for each activity shall be listed. Longer duration activities shall be broken into sub-activities when the activity duration is fourteen (14) calendar days or more and/or when the Work can be completed in phases (i.e., floor number or building number, south half, north half, etc.). Contractor will be allowed flexibility in schedule, logic and content; however, the Progress Schedule must be broken down by all trades, indicating ordering, delivery, and Milestone Dates, and the following activities must be included in all cases, if covered by the scope of the Work: (a) award of Contract; (b) site delivery and mobilization; (c) demolition; (d) pour foundations; (e) underground utilities; (f) pour slabs phase; (g) exterior walls phase; (h) columns; (i) floor and roof structure phase; (j) roof decking; (k) roofing (dry in); (l) HVAC duct work; (m) fire sprinkler piping; (n) interior stud walls phase; (o) drywall; (p) lath and plaster phase; (q) painting phase; (r) shop drawing submittals; (s) ordering and delivery of long lead materials; (t) regulating approvals and inspections; (u) Owner's selection of materials; (v) completion of any parking structures; (w) the agreed-upon Milestone Dates as reflected in the Milestone Schedule (including, without limitation, Commencement Date and Substantial Completion Deadline); (x) all temporary certificates of occupancy; (y) certificates of occupancy; or (z) required Mock-Ups. For all long lead materials, the Progress Schedule shall include a material purchase log indicating the item of material. No changes shall be made to any of the Milestone Dates within the Milestone Schedule or the controlling Progress Schedule without an executed Change Order to the Contract.
      4. Contractor shall perform the Work in accordance with the Progress Schedule as well as within the Milestone Dates and Completion Dates specified in the Contract. The times set forth in the Milestone Schedule for all Milestone Dates and the time of completion must govern. Contractor shall update the Progress Schedule on a current basis and shall keep proper records to substantiate actual activity durations and completion dates. In addition to Progress Schedule updates, Contractor shall provide at the weekly meetings described in Paragraph 2.3.1 of the Agreement written reports to Owner on the progress of the Work. The progress report shall specify, among other things, a narrative summary of the Work performed and significant events occurring during the week and a “look ahead” schedule describing the Work to be accomplished in the ensuing three (3) week period. Contractor will review such reports with Owner at each weekly meeting and provide the information then known to Contractor as to courses of any delays or impacts, estimated impacts, and recovery strategy options.
      5. Contractor shall submit to Owner every thirty (30) days, or more frequently if requested by Owner, for Owner’s review, three (3) copies of an updated Progress Schedule, meeting all the requirements of this Article 8, and an updated as-built schedule to date to demonstrate actual progress of the Work in relation to the original Milestone Schedule and the original Progress Schedule and any changes in Contractor’s planned activities, to be supplemented by other interim update or revisions to the Progress Schedule, as may be required by Owner. Subject to Paragraph 5.2 of the Agreement, if updates to the Progress Schedule and As-Built Schedule indicate negative float on the critical path, then Contractor shall generate a “Recovery Schedule” reflecting what corrective action, acceleration or extraordinary efforts will be taken by Contractor to recapture the contract Milestone Dates indicated in the Milestone Schedule and the Original Progress Schedule. No Progress Schedule updates shall modify the date of Substantial Completion required by the Contract Documents unless the parties execute a Change Order which modifies the Contract Time.
      6. In addition, and subject to Paragraph 5.6 of the Agreement, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any of the Milestone Dates set forth in the Progress Schedule, Owner may direct Contractor to accelerate its work, without any adjustment to the GMP. Such acceleration may include employing such additional forces or paying such additional overtime wages as may be required to place the progress of the Work in conformity with the Progress Schedule and to assure timely achievement of all Milestone Dates and Substantial Completion of the Work in its entirety.
      7. In addition, and subject to Paragraph 5.6 of the Agreement, if the progress of the Work is behind the Progress Schedule to such an extent that Owner reasonably determines that Contractor will be unable to meet any one of the Milestone Dates set forth in the Progress Schedule, or is otherwise unsatisfactory to Owner, and Contractor fails after receiving five (5) business days written notice to take prompt and adequate corrective action to Owner’s satisfaction to improve the progress of the Work and/or bring the progress of the Work into compliance with the Progress Schedule, Owner may, in addition to exercising any other right or remedy provided herein, supplement Contractor’s forces and correct the deficiencies by whatever means Owner deems appropriate. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor for all costs of supplementing the Work or correcting such deficiencies. Nothing herein shall require or impose upon Owner an obligation to correct the deficiencies. If deductive Change Orders are not processed before final payment is due, said amounts may be nonetheless set off against any amounts due and owing to Contractor.
      8. Contractor shall begin the Work in accordance with the Paragraph 5.1 of the Agreement, and shall perform the Work diligently, expeditiously and with adequate resources so as to complete all the Work within the Contract Time. Contractor shall comply with any schedule or schedules established by it and approved by Owner with respect to the commencement, performance, or completion of the various portions of the Work. Neither the scheduling information submitted by Contractor or its Subcontractors, the acceptance or approval thereof by Owner nor the establishment or implementation of, or failure to establish or implement, schedules by Owner shall relieve Contractor of its obligation to perform and complete the Work in a timely manner or to otherwise perform in accordance with the Contract Documents.
   2. Delays and Extension of Time.
      1. Delays and extension of time shall be governed by the Agreement.
   3. Temporary Suspension of Work. Owner shall have the authority to suspend, delay, or interrupt the Work, in whole or in part, for such periods and such reasons as it may deem necessary or desirable, in its sole discretion, including without limitation:

8.4.1 other conditions considered unfavorable for the suitable prosecution of the Work; and/or

8.4.2 other conditions considered adverse to the best interests of Owner.

Any such suspension shall be in writing to Contractor and expressly declare a temporary suspension of the Work. No other acts or omissions of Owner shall be construed as a constructive suspension of the Work. Contractor shall obey immediately such orders of Owner and shall not resume the Work until so ordered in writing by Owner. Should Owner declare a suspension or its intent to declare a suspension, Contractor shall, within five (5) days of Owner’s written demand, inform Owner in writing of what it contends the Cost of the Work as defined in Article 7 of the Agreement are related to the suspension. In the event a temporary suspension is declared by Owner, Contractor shall be entitled to an adjustment of the Guaranteed Maximum Price to compensate Contractor for the reasonable and verified additional Cost of the Work (including the Cost of the Work for General Conditions Items) incurred by Contractor to the extent directly and solely related to the suspension, per Paragraphs 5.7 of the Agreement and an extension of the Contract Time not to exceed the length of time that the Work was suspended with appropriate adjustment for the time required for demobilization and remobilization and seasonal conditions if, but only if, (i) the claim for such an adjustment to the Guaranteed Maximum Price and Contract Time is submitted in accordance with Article 13 herein, and (ii) the suspension is not due to an act or omission of Contractor, any Subcontractor or Sub subcontractor or any other person or organization for whose acts or omissions Contractor may be liable.

* + 1. Notwithstanding the foregoing, no adjustment to the Guaranteed Maximum Price or Contract Time shall be made to the extent: (i) the Work is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; (ii) where the conditions of Paragraph 2.6 of the Agreement have not been met; or (iii) that an adjustment is made or denied under another provision of this Contract.
    2. Contractor shall cooperate with Owner in good faith to protect the Work during the period of any suspension and minimize the cost of Work that accrues during the period of suspension. Contractor shall promptly recommence the Work upon written notice from Owner directing Contractor to resume the Work. When all or a portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage.

**ARTICLE 9**

**PAYMENTS AND COMPLETION**

* 1. Application for Payment; Passage of Title.
     1. The “**Payment Application Date**” shall be that day of each calendar month designated in the Agreement when Contractor shall deliver the “Application for Payment”, as hereinafter defined, to Owner.
     2. The “**Application for Payment**” shall be an invoice submitted on AIA Document G702 together with AIA Document G703 (or such other form as is required or approved by Owner) prepared by Contractor and submitted to Owner in accordance with the Contract Documents. It shall show in detail all monies properly payable to Contractor in accordance with Article 7 of the Agreement and include those items of labor, materials and equipment used or incorporated in the Work or suitably stored at the Job Site through and including the Payment Application Date. The Application for Payment shall have, as attachments: (i) properly completed and executed conditional waivers of construction liens or bond claims by Contractor and all Subcontractors, Sub- subcontractors and “Lienors” (as that term is defined in Florida Statutes § 713.01(18)) providing notice to Owner under Florida Statutes, Chapter 713, as amended from time to time, conditioned only upon receipt of the amount sought in the current Application for Payment, (ii) a certified report from Contractor showing all suppliers who have provided supplies and/or materials to the Project and Subcontractors with whom Contractor has entered into subcontracts, the amounts of such subcontracts, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to Contractor from such progress payment; (iii) applications for payment from each Subcontractor on AIA Document G702 together with AIA Document G703 (or such other form as Owner may approve in writing) and a summary (and copies if requested by Owner) of all supplier invoices included within such Application for Payment; (iv) such other evidence of performance of the Work, the costs thereof and payment therefore as Owner may deem necessary or desirable to establish Owner’s interest therein, including but not limited to, interim affidavits regarding paid and unpaid lienors; and (v) such other information, documentation and materials as Owner, the Architect/Engineer or Lender may require.
        1. Further, the Application for Payment shall be accompanied by a certification, notarized and sworn by an officer of Contractor (which for the purposes hereof shall include Contractor’s project manager) and in the form of the Form of Contractor’s Sworn Statement included in Composite Exhibit E, to the effect that (a) there are no known construction, mechanics’, materialmen’s or laborers’ liens or claims or any other liens or claims, legal or equitable, contractual or statutory, including bond claims or notices of non-payment, outstanding or known to exist at the date of the application; (b) all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the application; (c) there is no known basis for the filing of any construction, mechanics’, materialmen’s or laborers’ lien or claim or any other lien or claim, legal or equitable, contractual or statutory, including bond claims or notices of non-payment, on or with respect to the Work. Contractor shall furnish with each Application for Payment Contractor’s waiver and release of liens and claims for which Contractor has been paid, together with waivers and releases from all subcontractors, laborers, and materialmen which have furnished materials and/or performed Work, in such form as Owner shall require. The requirements of this Section 9.1.2 shall be specifically incorporated into all subcontracts entered into between Contractor and Subcontractors.
        2. Contractor and all Subcontractors, Sub-subcontractors and all tiers and all parties making purchases of materials on the Project (hereinafter referred to as “Purchasers”) shall be required to retain copies of all original invoices which are issued by the vendors who sold building materials to the Purchasers that are used in, under, on or which become part of the Work. The invoices shall show the materials purchased (e.g., steel, concrete, drywall, flooring, paint, cabinets, appliances, lighting and other fixtures, doors, glass/windows, affixed benches, swimming pool materials, lumber, wiring, etc.), the cost of the item and the amount of sales tax paid on the building materials.
     3. Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment shall pass to Owner, free and clear of all liens, claims, security interests or encumbrances, upon the sooner occurrence of:

9.1.3.1 the delivery of any materials or equipment to the Job Site; or

9.1.3.2 the tender of payment of the applicable Application for Payment by Owner to Contractor;

and that no Work, materials or equipment covered by an Application for Payment shall have been acquired, whether by Contractor or by any other person performing a portion of the Work or furnishing materials and equipment for the Work, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by Contractor or such other person. Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor’s knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

* + 1. The passage of title to Owner as provided in Section 9.1.3 shall not alter or limit the obligations and duties of Contractor with respect to the Work and the materials or equipment incorporated therein or used in connection therewith as set forth in the Contract Documents.
    2. Duplicate originals of the periodic Subcontractor and Subcontractor lien and bond waivers and releases and Applications for Payment and all data for such applications shall remain on file at Contractor’s office for inspection by Owner. Duplicate originals of final lien waivers and releases supplied by each Subcontractor and materialman shall remain on file at Contractor’s office for a period of one (1) year from the date of final payment and shall be available for inspection by Owner.
  1. Approvals of Applications for Payment.
     1. Owner’s approval of an Application for Payment shall not constitute a representation by Owner that any and all conditions precedent to Contractor’s entitlement to payment have been fulfilled, nor shall approval of an Application for Payment by Owner be deemed a representation by Owner:

9.2.1.1 that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;

9.2.1.2 that it has reviewed the construction means, methods, techniques, sequences or procedures or the safety precautions and programs in connection with the Work; or

9.2.1.3 that it has made any examination to ascertain how or for what purpose Contractor has used the monies previously paid on account of the Contract Sum; or

9.2.14 reviewed copies of requisitions received from Subcontractors and suppliers, and other data required by Owner to substantiate Contractor’s right to payment.

* + 1. No approval of an Application for Payment, progress payment or any partial or entire use or occupancy of the Project by Owner shall constitute an acceptance of any Work which is not in accordance with the Contract Documents; and regardless of approval of an Application for Payment by Owner, Contractor shall remain totally obligated and liable for the performance of the Work in strict compliance with the Contract Documents.
    2. After Owner has approved an Application for Payment, in whole or in part, it shall make payment of the amount approved to Contractor as provided in the Contract Documents.
    3. When an Application for Payment includes materials stored off the site or stored on the site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the Application for Payment together with evidence of insurance in a form satisfactory to Owner and Lender specifically relating to and describing such material. Suitable storage which is off the site shall be a bonded warehouse or otherwise appropriate storage approved by Owner and Lender with the stored materials properly tagged and identifiable for this Project and properly segregated from other materials, all of which is subject to inspection and verification by Owner and Lender. Owner’s and Lender’s written approval shall be obtained before any use of offsite storage is made. Such approval may be withheld in Owner’s reasonable discretion. Before approval, Owner may require, without limitation, (a) evidence that the location is properly secure, (b) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the site, and (c) a certificate from Contractor stating: (i) the name of Contractor and/or the Subcontractor leasing or owning the storage area; (ii) the location of such storage space, including the storage area (i.e., the entire premises or certain areas of a warehouse giving the number of floor or portions thereof), and a certification that Contractor has visited such location, verified the storage of such material therein or thereon, and payment of all current storage charges; (iii) the date on which the material is first stored; and (iv) a description, including quantities and value, of the materials stored. Contractor shall furnish to Owner, not less often than once per month, a current inventory of all materials being stored at any offsite location. Contractor and all applicable and Sub-subcontractors shall mark each sealed carton or other item with the name of the Project and Owner, and all materials stored off-site shall be segregated to the extent required by Owner. Any and all charges for storage, including insurance and all costs associated with Contractor’s visits to such location, shall be included within the Guaranteed Maximum Price. Contractor (and not Owner) shall retain all risk of loss for goods in transit and items stored off site and shall secure appropriate insurance to cover such losses within the Guaranteed Maximum Price. No payment shall be made to Contractor for materials and equipment located at off-site locations without the approval of Owner, and Owner’s obligation to make any such payments shall be subject to approval and funding by the Lender. Owner and Owner’s Lender may file Uniform Commercial Code financing statements with respect to such materials to provide record notice of Owner’s and Owner’s Lender’s interests in the materials. Owner and Owner’s Lender may file Uniform Commercial Code financing statements with respect to such materials to provide record notice of Owner’s and Owner’s Lender’s interests in the materials.
  1. Payments Withheld; Owner’s Right to Make Direct Payment for Work.
     1. Owner (or Architect/Engineer or Lender or their respective inspectors) may withhold its approval of an Application for Payment, in whole or in part, or nullify the whole or any part of an approval previously given if it determines that the Application for Payment covers portions of the Work which have not, in fact, been completed and/or for which payment is not then due or if, and to the extent that, it deems it necessary or desirable, in its sole discretion, to protect itself against loss or damage due to:
        1. Defective Work not remedied;
        2. third party claims or liens or reasonable evidence indicating probable third-party claims or liens;
        3. failure or alleged failure of Contractor to make payments to Subcontractors (or of Subcontractors to make payments to Sub-subcontractors) as required by the Contract Documents;
        4. inability, or reasonable doubt as to the ability, of Contractor to complete the Work and/or complete the Work within the Contract Time;
        5. damage to surrounding property, Owner, or a separate contractor;
        6. unsatisfactory prosecution of the Work by Contractor;
        7. failure of Contractor to maintain the Job Site in a clean condition;
        8. failure of Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents;
        9. failure to achieve Milestone Dates; or
        10. failure of Contractor to comply with any other provision of the Contract Documents.

The Architect/Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect Owner, if in the Architect/Engineer’s opinion the representations to Owner contained in the Certificate for Payment cannot be made. Architect/Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect/Engineer’s opinion to protect Owner from loss for which Contractor is responsible, including loss or damage due to any of the above reasons in this Section 9.3.1.

* + 1. When none of the grounds set forth in Section 9.3.1 any longer exist or when Contractor, at its sole expense, provides a surety bond (separate and apart from any other bond provided by Contractor hereunder) satisfactory to Owner in the amount withheld, then payment may be made to Contractor for the amount withheld under Section 9.3.1.
    2. If Contractor unreasonably withholds payment from its Subcontractors or upon the occurrence of grounds set forth in Section 9.3.1, Owner, upon sufficient notice and after providing an opportunity to cure of not less than five (5) business days, may make joint payments to Contractor and any person supplying labor, materials and/or equipment for the Work in lieu of only paying Contractor. Any amounts so paid shall be credited against the Cost of the Work. Contractor shall cooperate with Owner to facilitate any such joint payment and shall provide such evidence as Owner may request for purposes of determining any amount to be paid.
       1. In the event Owner elects to make payments through joint checks, it shall not: (i) relieve Contractor of its obligation to pay any person supplying labor, materials, services or equipment on the Project; (ii) constitute Owner interference between Contractor and any Subcontractor or Sub-subcontractor; (iii) impose upon Owner the obligation to utilize joint checks in the future; or (iv) create any contractual relationship or obligation between Owner and anyone providing labor, materials, services or equipment on the Project. Owner’s reserved right to issue joint checks shall not be construed as imposing any obligation upon Owner to do so.
    3. If any construction lien or notice of non-payment or similar claim is filed on Owner’s or any other person’s or entity’s property by any person or entity as a result of the Work, and if Contractor has not caused such lien, notice or claim to be released and discharged forthwith, or filed a bond in lieu thereof, in accordance with Section 713.24, Florida Statutes, upon five (5) business days’ prior written notice Owner may take such action as it deems advisable to protect itself from such lien or claim of lien, including, without limitation, the right to pay all sums necessary to obtain such release and discharge and deduct all amounts so paid from the next succeeding Applications for Payment until the total amount of same shall be recouped, and Contractor shall pay to Owner the amounts incurred by Owner, including reasonable attorneys’ fees in taking such protective action, as Owner may elect in its sole discretion. Contractor shall indemnify, defend, and hold harmless Owner from all claims, losses, demands, causes of actions or suits of whatever nature arising out of any such lien, notice of non-payment or claim provided that Owner has made payments in accordance with its obligations under the Contract Documents.
  1. Substantial Completion and Final Payment.
     1. At such time as the Work, in its entirety, achieves Substantial Completion as provided in Paragraphs 5.2 and 5.3 of the Agreement, Contractor shall prepare and submit to Owner its final bill, including itemized projected amounts for any portions of the Work not yet completed. The failure to include any items on the foregoing list shall not alter the responsibility of Contractor to complete and/or correct the Work in accordance with the Contract Documents.
        1. When Owner, on the basis of an inspection and certification from the Architect/Engineer, confirms the notification from Contractor that the Work, in its entirety, has achieved Substantial Completion or, without being notified by Contractor, determines that the Work has achieved Substantial Completion, Architect/Engineer shall prepare and deliver to Owner and Contractor for their written acceptance a Certificate of Substantial Completion (herein so called) on Form AIA G704 or such other form acceptable to Owner, which may state the responsibilities of Owner and Contractor for maintenance, heat, utilities and insurance and shall list the items determined by Owner to require completion or correction, as applicable, and fix a reasonable time within which Contractor shall complete or correct the items listed and submit to Owner all documents and other matters required by the Contract Documents to be submitted by Contractor upon completion of the Work. Warranties required by the Contract Documents shall commence on the Turnover Date of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
        2. The Certificate of Substantial Completion shall constitute a demand for a formal billing (including all costs or fees for any outstanding Change Orders and itemized projections for any incomplete Work), and Contractor shall be deemed conclusively to have waived the right to payment of any item, fee or cost of any kind not billed to Owner within sixty (60) calendar days of delivery to Contractor of the Certificate of Substantial Completion, except for Change Order(s) or written claims in the possession of Owner which are still pending approval or in dispute.
        3. The issuance of the Certificate of Substantial Completion shall not constitute a waiver of any rights of Owner, including, without limitation, the right to those retainages permitted by the Contract Documents. If Contractor does not complete and/or correct any “punch-list” items listed in the Certificate of Substantial Completion within the time fixed therein, Owner shall have the right to accomplish the same and offset all costs thereof against any amounts then or thereafter due to Contractor. If the amounts then or thereafter due to Contractor are not sufficient to cover such costs, Contractor shall pay the difference to Owner within thirty (30) days of written demand thereof.
     2. Within a reasonable time following Owner’s receipt of written notification from Contractor that the Work, in its entirety, is ready for final inspection and acceptance and the final Application for Payment, Owner shall make such inspection and, when the Work is found to be acceptable under the Contract Documents and the Contract fully performed, shall approve the final Application for Payment; provided, however, that neither the final payment nor any retainage shall become due until Contractor submits to Owner all of the following documentation in form and substance acceptable to Owner and all of the following events have occurred:
        1. Contractor’s Final Affidavit in conformity with Florida Statutes, Section 713.06 (3)(d);
        2. satisfactory evidence to Owner that all claims of lien or notice of non-payment or claims related thereto have either been paid in full and released or Contractor shall have posted a valid surety bond sufficient to discharge same;
        3. such other data as Owner may require establishing payment or satisfaction of all obligations of Contractor in connection with the Work (including, without limitation, receipts and final releases and waivers of liens/bond claims by Contractor, Subcontractors and Sub-subcontractors conforming in all material respects with the then current provisions of Chapter 713 of the Florida Statutes, as amended from time to time, and evidencing performance of the Work in accordance with the Contract Documents);
        4. consent of sureties, if any, to final payment;
        5. a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment together with a written statement that Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
        6. all Contract Documents (except one set thereof to be retained by Contractor), including a complete set of Record Documents, as defined in, and prepared in accordance with the General Requirements;
        7. any and all governmental certificates or approvals required by any governmental authority having jurisdiction over the contemplated uses, operations and occupancy of the Project (including, without limitation, final certificate(s) of occupancy), or by the Contract Documents or otherwise to evidence compliance of the Work and Contractor with Applicable Laws;
        8. satisfactory evidence to Owner that no Uniform Commercial Code financing statements or fixture filings are recorded or filed against Owner or Owner’s interest in the property or the Project;
        9. Contractor’s, Subcontractor’s and Sub-subcontractor’s assignment(s) of all required product and service warranties and guarantees, along with a complete warranty book containing all written warranties and guarantees from all suppliers and Subcontractors, where applicable, and in full compliance with the requirement set forth in the Contract Documents and Applicable Law, including, but not limited to, Chapter 718 of the Florida Statutes, if applicable, and all such warranties and guarantees shall be fully assignable to Owner, and its successors and assigns;
        10. three (3) complete sets of as-built plans, which shall have recorded all changes made during construction, maintenance and operating instructions, and any and all surveys or plans required of Contractor by the Contract Documents and one additional set in an electronic format fully accessible and readable by Owner; and
        11. with respect to Owner’s obligation to remit to Contractor the balance of the retainage, thirty (30) days shall have expired since Final Completion of the Work.
     3. The making of Final Payment shall not constitute a waiver of any claims or rights by Owner.
     4. The acceptance of Final Payment shall constitute a waiver of all claims by Contractor, a Subcontractor or material supplier except claims previously made in writing and identified by that payee in writing delivered to Owner as unsettled at the time of, and submitted with, the final Application for Payment.
     5. If any Subcontractor or Sub-subcontractor refuses to furnish any release or waiver of lien or claim against the bond required at any time by Owner under Sections 9.1, 9.3 or 9.4, or files a claim of lien, serves a notice of non-payment or other claim, Contractor shall, if requested by Owner and at Contractor’s expense, and within ten (10) business days of receipt of notice of said lien, notice of non-payment or claim, discharge said lien or claim, furnish bond satisfactory to Owner to indemnify Owner against such lien, security interest, or encumbrance, or otherwise make provision satisfactory to Owner for its satisfaction as permitted by law. Contractor shall indemnify, defend, and hold harmless Owner and its property against any such lien or claim. If any lien or claim remains unsatisfied after all payments are made to Contractor, Contractor shall reimburse Owner on account of all monies that the latter may be compelled to pay in discharging such lien, notice of non-payment or claim, including all costs and attorneys’ fees.
  2. Partial Beneficial Use and Occupancy by Owner.
     1. It is hereby acknowledged and agreed that Owner intends to take and Contractor intends to provide early occupancy of some or all of the Work providing same is substantially completed in accordance with Article 5 of the Agreement and as per the Turnover Date milestones reflected on the Milestone Schedule. This early occupancy is referred to herein as “**Partial Beneficial Occupancy**”.
     2. Partial Beneficial Occupancy shall constitute acceptance by Owner of the applicable portion of the Work for purposes of occupancy, but shall not relieve Contractor of its full responsibility for completing any unfinished Work, correcting Defective Work and repairing the Work, and shall not be deemed to be the equivalent of completion of the Work, and shall not entitle Contractor to any increase in the Contract Sum, shall not stop the accrual of liquidated damages as to the remainder of the Work, as provided by Paragraph 5.4 of the Agreement, and shall not commence any warranties or the correction period under the Contract Documents, provided that Contractor shall not be liable for ordinary wear and tear resulting from such Partial Beneficial Occupancy.

**ARTICLE 10**

**PROTECTION OF PERSONS AND PROPERTY**

* 1. Responsibility for Safety and Health.
     1. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of Owner who may be affected thereby; the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of Contractor, a Subcontractor, or a Sub-subcontractor; and other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. These precautions may include, but in no event be limited to: security guards; fencing; posting danger signs and personal notification to all affected persons of the existence of a hazard, of whatever nature; furnishing and maintaining of necessary traffic control barricades and flagman services; using or storing required explosives or other hazardous materials only under the supervision of qualified personnel and after first obtaining permission of the applicable fire chief or his or her duly authorized representative; and maintaining adequate quantities of both hose and operable fire extinguishers at the Job Site, and such other security measures as are necessary to protect the Work in progress, as well as materials to be incorporated therein, and all persons on, in or near the Project. Contractor shall set forth in writing its safety precautions and programs in connection with the Work and, if requested by Owner, submit the same to Owner for review. Owner may, but shall not be obligated to, make suggestions and recommendations to Contractor with respect thereto. The review of any safety plan by Owner shall not, and shall not be deemed to, release Contractor or in any way diminish its liability by way of indemnification or otherwise as assumed by it under the Contract Documents. Contractor shall provide temporary 6’0” high chain link fencing with wind screen, temporary partitions, dust screening, or other such temporary measures as needed to separate any partial or permanent occupancy from ongoing work. Such temporary construction shall be periodically reconfigured to allow for partial occupancy of the Project as intended by the Milestone Dates.
     2. All Work, whether performed by Contractor, its Subcontractors or Sub-subcontractors or anyone directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to:

10.1.2.1 all Applicable Laws relating to the safety of persons and their protection against damages, injury, or loss, specifically including, but in no event limited to, the *Federal Occupational Safety and Health Act of 1970*, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act, and

10.1.2.2 all codes, rules, regulations and requirements of Owner and its insurance carriers relating thereto, if any. In the event of conflicting requirements, the more stringent shall govern.

* + 1. Contractor shall designate in writing a responsible member of its organization at the Job Site whose duties it shall be to enforce Contractor’s safety programs, to assure compliance with Section 10.1.2 and to prevent accidents. This person shall be Contractor’s project superintendent unless otherwise designated in writing by Contractor to Owner. Contractor shall further cause each of its Subcontractors and Sub-subcontractors to designate in writing a responsible representative to assist Contractor’s representative in the performance of his or her duties as aforesaid.
    2. Should Contractor fail to provide a safe area for the performance of the Work or any portion thereof, Owner shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature resulting from the suspension, by whosoever incurred, shall be borne by Contractor.
    3. Contractor shall provide or cause its Subcontractor or Sub-subcontractor to provide, to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. Owner shall have the right, but not the obligation, to order Contractor to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices, with which order Contractor shall promptly comply.
    4. Contractor shall defend, indemnify and hold Owner and the other Owner Indemnitees harmless from any and all liability (including, without limitation, strict liability), public or private, penalties, contractual or otherwise, losses, damages, costs, attorneys’ fees, expenses, causes of action, claims or judgments resulting from any failure of Contractor, its Subcontractors or Sub-subcontractors or anyone directly or indirectly employed by any of them, to comply with the provisions of this Article 10. Contractor shall not be relieved of its responsibilities under this Article 10 should Owner act or fail to act pursuant to its rights hereunder, nor shall Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon Contractor by the Contract.
    5. Contractor shall notify Owner immediately in the event of an Occupational Safety and Health Administration inspection when no Owner personnel are on the Project site.
  1. Protection of Work and Property; Responsibility for Loss/Security.
     1. Contractor shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, shall protect the property of Owner and third parties from loss or damage from whatever cause arising out of the performance of the Work and shall comply with the requirements of Owner and its insurance carriers and with all Applicable Laws with respect to the prevention of loss or damage to property as a result of fire or other hazards.

Owner may but shall not be required to, make periodic visits to the Job Site. In such event, however, Contractor shall not be relieved of its aforesaid responsibilities, and Owner shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon Contractor by the Contract.

* + 1. Until final acceptance of the Work by Owner pursuant to Section 9.4, Contractor shall have full and complete charge and care of all Work not accepted or occupied by Owner and, except as otherwise provided in this Section 10.2.2, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) for any cause whatsoever.

Contractor shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance. Such rebuilding, repair or restoration shall be at Contractor’s sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair, or restoration:

1. is a recoverable Cost of the Work under Paragraph 7.7.3 of the Agreement, subject to the GMP;
2. is directly due to errors in the Contract Documents which Contractor could not have discovered through the exercise of reasonable due diligence;
3. is caused by the agents or employees of Owner (unless (i) Owner’s property insurance covers the loss, and Contractor has waived its rights of subrogation against Owner on account thereof as provided in the Contract Documents, or (ii) such loss or damage would be covered by any policy or policies of insurance which Contractor is required to maintain hereunder, whether Contractor actually maintains such insurance or not, or (iii) is otherwise covered by a policy or policies of insurance maintained by Contractor, whether or not required hereunder); or
4. is caused by a hazard against which Owner is required to insure under the provisions of Article 11 hereof (except, if the loss, injury or damage would not have occurred but for the negligent act or omission of Contractor or any of its Subcontractors or Sub-subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, to the extent of the deductible on said insurance).

Contractor shall be responsible for the protection of surrounding property or persons that may be impacted by construction activity including, but not limited to, traffic control, well points, crane activity and security.

* + 1. Contractor shall furnish, erect and maintain all temporary enclosures, gates, doors, partitions and security guards as may be required for safety and security to isolate the construction phase areas from adjacent areas, the nature and location of which will be determined by mutual agreement of Owner and Contractor. If Owner directs, Contractor shall provide for a competent security guard service to secure and guard the premises during overnight hours, weekends or whenever Owner may so direct.
    2. In case of accident(s) arising out of or in connection with the Work that causes death, bodily injury or property damage, Contractor shall immediately furnish Owner and the Architect/Engineer the full information relative to such accident(s) by telephone report plus full written report within forty-eight (48) hours after the accident occurred.
    3. The Work shall be performed in such a manner as to prevent fires, and during any Work involving a fire hazard, Contractor shall take all reasonable precautions against fires starting and spreading. Contractor shall provide and maintain suitable fire extinguishers and other materials or equipment where and as required to provide adequate means of extinguishing fires. All exit doors discharging to the exterior and doors to exit stairs shall be maintained throughout all phases of the Work.
  1. Surface or Subsurface Water. Site drainage shall be the responsibility of Contractor upon commencement of construction until Final Completion of the Project, and thereafter as the applicable warranties and laws may require.
  2. Emergencies. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the performance of the Work or the Work to be performed, Contractor shall act immediately to prevent threatened damage, injury or loss or to remedy said violation, failing which Owner may immediately take whatever action it deems necessary, including, but not limited to, suspending the Work as provided in Section 8.4. If said emergency is the result of any fault, breach, failure or negligence of Contractor or Contractor’s Subcontractors or Sub-subcontractors or anyone working for them, Owner may offset any and all costs or expenses of whatever nature, including attorneys’ fees, paid or incurred by Owner in taking such action against any sums then or thereafter due to Contractor and Contractor shall defend, indemnify and hold Owner and the other Owner Indemnitees harmless against any and all costs or expenses pursuant to this Section 10.4, by whomsoever incurred. If Contractor shall be entitled to any additional compensation or extension of time claimed on account of emergency work not due to the fault or neglect of Contractor or its Subcontractors or Sub-subcontractors, it shall be handled as a claim as provided in Article 13.
  3. Owner’s Standards. Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which Contractor shall comply, and to review the efficiency of all protective measures taken by Contractor. The exercise of or failure to exercise any or all of these acts by Owner shall not relieve Contractor of its duties and responsibilities under the Agreement and Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of Contractor.
  4. Temporary Services. Owner and Contractor agree to perform their own tasks during punch-out inspection and repair with utmost diligence and cooperation. Contractor shall provide temporary sanitary facilities for the use and convenience of all trades during construction. All utilities of every kind necessary for construction and for use of the Project shall be provided by Contractor. Owner shall assume responsibility for all utilities associated with the Partial Beneficial Occupancy of the apartments or designated portion of the Work turned over to Owner as contemplated by the Milestone Schedule. All utility costs necessary up to Substantial Completion of the Work shall remain the responsibility of Contractor.
  5. Water Intrusion. Contractor acknowledges that the nature of the Work requires appropriate protection and procedures to avoid the intrusion of water in the area where the Work is performed. In this regard, Contractor shall develop and implement appropriate moisture intrusion prevention procedures in connection with the Work, which shall stay in effect until Final Completion. These moisture intrusion procedures shall include measures to prevent and manage the intrusion of water and vapor caused by Contractor’s performance of the Work so that such conditions do not cause mold or other damage to the Work and shall include procedures for responding and remediating actual water intrusion or mold conditions caused by Contractor’s performance of the Work or its failure to protect the Work. Contractor shall employ reasonable methods to discover the presence of leaks. If Contractor discovers water intrusion or mold before, during or after construction of the Work, Contractor shall notify Owner in writing of such condition within forty-eight (48) hours of its discovery and shall provide Owner all inspection reports, testing data, photographs, samples or other materials associated with the investigation or remediation of the water intrusion incident or mold condition. Contractor shall cause any such water intrusion incident or mold condition encountered to be remediated (by separate specialized remedial contractors, in accordance with applicable governmental requirements and standards, including all OSHA requirements concerning the required remediation). Except to the extent any water intrusion or mold remediation costs are excluded from the Cost of the Work under any applicable provisions of Article 7 and/or Article 8 of the Agreement, Contractor’s costs of performing such remediation shall be reimbursed as a Cost of the Work subject to the Guaranteed Maximum Price. The remediation shall be fully documented with respect to the conditions prior to remediation, the activities involved in the remediation and the conditions at the conclusion of remediation, with appropriate field reports, photographs, samples and other information that can be used to confirm and verify appropriate and effective remediation. Contractor shall notify Owner in writing when the remediation is complete, so that Owner can review the affected area and verify completion.
  6. Hazardous Materials and Substances.
     1. Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including asbestos or polychlorinated biphenyl (PCB), encountered on the site by Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify Owner and Architect/Engineer of the condition.
     2. Upon receipt of Contractor’s written notice, if Owner desires to proceed with the Project, Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately.
     3. Contractor shall not use or permit the use of any hazardous substance at the Project site without the express written consent of Owner. Contractor shall provide Owner with Material Safety Data Sheets for all hazardous materials or substances prior to bringing such materials to the Project site. Owner shall not be responsible under this Section 10.8.3 for hazardous materials or substances Contractor brings to the site unless such materials or substances are required by the Contract Documents. To the extent of Contractor’s fault or negligence in the use and handling of such hazardous materials or substances, to the fullest extent permitted by law, Contractor shall indemnify and hold harmless Owner Indemnitees (as defined under Paragraph 14.4 of the Agreement) from an against claims, damages, losses, and expenses, including reasonable attorneys’ fees, arising out of resulting from bodily injury (including, without limitation, sickness or death) or damage to property related to use or misuse of such hazardous materials or substances, except to the extent of the sole fault or negligence of Owner or an Owner Indemnitee.
     4. Contractor shall reimburse Owner for the cost and expense Owner incurs (1) for remediation of hazardous materials or substances Contractor brings to the site and negligently handles, or (2) where Contractor fails to perform its obligations under Section 10.8.1, except to the extent that the cost and expense are due to Owner’s fault or negligence
     5. If, without fault or negligence on the part of Contractor, Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, Owner shall reimburse Contractor for all cost and expense thereby incurred.

**ARTICLE 11**

**INSURANCE**

11.1 Contractor’s Insurance and Bonds.

11.1.1 Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents and Applicable Laws, at all times during the performance of the Work until final acceptable of the Work or for such longer duration as required by the Agreement or elsewhere in the Contract Documents. Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Owner Indemnitees, Architect, and Architect/Engineer’s consultants shall be included as additional insureds under Contractor’s commercial general liability policy and as otherwise described in the Contract Documents. In no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under the Contract. The carrying of insurance shall not be deemed to release Contractor or in any way diminish its liability or obligations, by way of indemnity or otherwise, under the Contract Documents. In no event shall any failure of Owner to receive required evidence of insurance or to demand receipt of evidence prior to Contractor’s commencing the Work be construed as a waiver by Owner of Contractor’s obligations to obtain insurance pursuant to the Contract Documents. The obligation to procure and maintain insurance required by the Contract Documents is a separate responsibility of Contractor and independent of its duty to furnish the required evidence of such insurance policies. The delivery of the required evidence of insurance is a condition precedent to Owner’s obligation to make payments. In the event of any conflict or inconsistency in the insurance requirements of Contractor under the Contract Documents, Contractor shall deliver prompt written notice to Owner but shall provide the insurance that meets the higher standard or better quality unless otherwise agreed in writing by Owner.

11.1.2 Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

11.1.4 Notice of Cancellation or Expiration of Contractor’s Required Insurance. Within seven (7) business days of the date Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents but in any event prior to the effective date of cancellation or expiration, Contractor shall provide notice to Owner of such impending or actual cancellation or expiration. Upon receipt of notice from Contractor, Owner shall, unless the lapse in coverage arises from an act or omission of Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by Contractor. The furnishing of notice by Contractor shall not relieve Contractor of any contractual obligation to provide any required coverage. If Contractor fails to purchase and maintain any insurance required under the Contract Documents, Owner may but shall not be obligated to, upon two (2) business days prior written notice to Contractor, purchase such insurance on behalf of Contractor, and shall be entitled to be reimbursed by Contractor upon demand.

11.1.5 All insurance coverage procured by Contractor shall be provided by insurance companies satisfactory to Owner who are lawfully authorized to do business in the jurisdiction in which the Project is located having policy holder ratings no lower than “**A-**” and financial ratings not lower than “**VIII**” in the *Best’s Insurance Guide*, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

11.1.6 Except as otherwise set forth herein, any deductibles or self-insured retentions in excess of Ten Thousand Dollars ($10,000) shall be subject to Owner’s approval, and Contractor shall be solely responsible for the payment of all deductibles and self-insured retentions. The coverage afforded to the Additional Insureds under the policies required of Contractor shall not be conditioned on the payment of any deductible or self-insured retention.

11.1.7 Contractor and its insurance carriers waive, release, and shall not exercise any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required under the Contract Documents, that Contractor or its insurers may have at any time against the Indemnitees.

11.1.8 Insurance coverage required in this Contract shall be additional security for the obligations assumed by Contractor and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Contract. The carrying of insurance shall not be deemed to release Contractor or in any way diminish its liability or obligations, by way of indemnity or otherwise, under the Contract Documents.

11.1.9 Contractor shall cause each Subcontractor to purchase and maintain the insurance as is required of the Subcontractors under the Contract Documents, as well as any other coverage that Contractor may consider necessary. The coverage afforded under any insurance policy obtained under or pursuant to the Contract Documents shall be primary to, and non-contributory with, any valid and collectible insurance carried separately by any of the additional insureds. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance liability under this insurance policy shall not be reduced by the existence of other insurance.

11.2 Owner’s Insurance.

11.2.1 Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

11.2.2 Failure to Purchase Required Property Insurance. If Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, Owner shall inform Contractor in writing prior to commencement of the Work. Upon receipt of notice from Owner, Contractor may delay commencement of the Work and may, after two (2) business days’ prior written notice to Owner, obtain insurance that will protect the interests of Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event Owner fails to procure coverage, Owner waives all rights against Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to Owner would have been covered by the insurance to have been procured by Owner. The cost of the insurance shall be charged to Owner by a Change Order. If Owner does not provide written notice, and Contractor is damaged by the failure or neglect of Owner to purchase or maintain the required insurance, Owner shall reimburse Contractor for all reasonable costs and damages attributable thereto.

11.2.3 Notice of Cancellation or Expiration of Owner’s Required Property Insurance. Within seven (7) business days of the date Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents but in any event prior to the effective date of cancellation or expiration, Owner shall provide notice to Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of Contractor: (1) Contractor, upon receipt of notice from Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either Owner or Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) Owner waives all rights against Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to Owner would have been covered by the insurance had it not expired or been cancelled. If Contractor purchases replacement coverage, the cost of the insurance shall be charged to Owner by an appropriate Change Order. The furnishing of notice by Owner shall not relieve Owner of any contractual obligation to provide required insurance.

11.3 Waivers of Subrogation.

11.3.1 Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) Owner’s Lender, (3) the Architect/Engineer’s consultants; and (4) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent of insurance proceeds received for those losses from property insurance required by the Agreement or other property insurance applicable to the Project. Notwithstanding the foregoing, the insurer providing the property insurance (including Builder’s Risk insurance) may be subrogated to all of Owner’s rights of recovery against: (a) any architect or engineer, whether named as an insured or not, for any loss or damage arising out of the performance of professional services in their capacity as such and caused by an error, omission, deficiency or act of the architect or engineer, by any person employed by them or by any others for whose acts they are legally liable, and (b) any manufacturer or supplier of machinery, equipment or other property, whether named as an insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether expressed or implied. Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect/Engineer’s consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

11.3.2 If during the Project construction period Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance. Owner, at Owner’s option, may purchase and maintain insurance that will protect Owner against loss of use of Owner’s property, or the inability to conduct normal operations, due to fire or other causes of loss. Owner waives all rights of action against Contractor and Architect/Engineer for loss of use of Owner’s property, due to fire or other hazards however caused.

11.5 Adjustment and Settlement of Insured Loss.

11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by Owner in good faith and made payable to Owner for the benefit of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. Owner shall pay the Architect/Engineer and Contractor their just shares of insurance proceeds received by Owner, and by appropriate agreements the Architect/Engineer and Contractor shall make payments to their consultants and Subcontractors in similar manner. Subject to the foregoing, Owner shall have the full power to adjust and settle all losses and claims under Owner’s property insurance policy or policies.

11.5.2 Prior to settlement of an insured loss, Owner shall notify Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If Contractor does not object, Owner shall settle the loss and Contractor shall be bound by the settlement and allocation. Upon receipt, Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or Owner does not terminate the Agreement for convenience, Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, Owner may proceed to settle the insured loss, and any dispute between Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, Owner may issue a Directive for the reconstruction of the damaged or destroyed Work.

**ARTICLE 12**

**CHANGES IN THE WORK**

* 1. Change Orders and Directives. Owner may, without affecting the validity of the Contract Documents or any term or condition thereof, issue a Change Order or Directive ordering extra work or other changes in the Work by altering, adding to or deducting from the Work, modifying the method or manner of its performance or otherwise (herein sometimes referred to as “**Change in the Work**”). The amount to be paid to Contractor pursuant to the Contract Documents shall, where applicable, be increased or decreased in the manner hereinafter set forth, provided, however, that if Contractor should proceed with a Change in the Work that does not arise from a written directive from Owner, contractor waives any claims for an increase in the Guaranteed Maximum Price on account thereof. Upon receipt of said Change Order or Directive, Contractor shall promptly proceed with the Change in the Work. All Changes in the Work shall be performed in accordance with the Contract Documents.
  2. Changes Requiring an Increase in GMP. If the Change in the Work will result in an increase in the Guaranteed Maximum Price, Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis properly itemized to Owner’s reasonable satisfaction with supporting documentation.
     1. In no event shall the markups charged by Subcontractors or Sub-subcontractors for profit, overhead, general conditions, insurance and bond for a Change in the Work exceed TBD percent (\_\_%) of the direct cost of such Change in the Work. In the event a Sub-subcontractor is performing the work associated with a Change Order, the Subcontractor shall be limited to a TBD percent (\_\_\_%) markup on the Sub-subcontractor’s direct cost of such Change in the Work.
  3. Changes Requiring a Decrease in GMP. If the Change in the Work will result in a decrease in the Guaranteed Maximum Price, Owner may request a quotation by Contractor of the amount of such decrease for use in preparing a Change Order. Contractor’s quotation should itemize and include, without limitation, the decrease associated with the corresponding decrease in insurance and bond costs of the sub tiers affected by the Change in the Work. Contractor’s quotation shall be forwarded to Owner within ten (10) calendar days of Owner’s request and, if acceptable to Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, then Owner may submit the matter to the Architect/Engineer for determination. In that event, the amount of such decrease shall be the total of the Architect/Engineer’s estimate of the reduction in actual Cost of the Work, as determined by the Architect/Engineer in its reasonable judgment, plus TBD percent (\_\_\_%) thereof as overhead and profit.
     1. When both additions and credits covering related or unrelated Work or substitutions are involved in a change, the markup shall be figured on the basis of the net change, if any, for that Change Order.
  4. Changes Affecting Contract Time. If the Change in the Work will result in an extension or contraction of the Contract Time, and the parties are unable to agree as to the number of days by which the Contract Time will be extended or contracted, Contractor shall not suspend performance of a change in the Work or the Work itself unless otherwise so ordered in writing by Owner and the dispute will thereafter be resolved pursuant to the applicable provisions of the Contract Documents. In the event of a dispute regarding an extension of the Contract Time, no determination shall be made until the Change in the Work has been completed, at which time its determination shall be based on a review of Contractor’s books and records relating to the time involved in performing the Change in the Work and whether Contractor diligently performed the same. The parties' rights with respect to the expansion or contraction of time for such Work shall be reserved.
  5. Disputes Regarding Changes. If any dispute should arise between the parties with respect to an increase or decrease in the Guaranteed Maximum Price or an expansion or contraction in the Contract Time as a result of a Change in the Work, Contractor shall not suspend performance of a Change in the Work or the Work itself unless otherwise so ordered by Owner in writing. Subject to Section 9.3.1, Owner shall, however, pay to Contractor up to Owner’s reasonable estimate of the value of the Change in the Work, regardless of the dispute, if said Change in the Work results in an increase in the Guaranteed Maximum Price and if the parties execute a Change Order confirming their tentative agreement to increase the Guaranteed Maximum Price by Owner’s reasonable estimated value, and Owner shall have the right to decrease the Guaranteed Maximum Price up to Owner’s reasonable estimated value of the Change in the Work, regardless of the dispute, if said Change in the Work results in a decrease in the Guaranteed Maximum Price. However, any undisputed amounts may be billed before the completion of the Change in the Work.
  6. Audit Rights. With respect to any and all Work except for those calculations which form the basis of stated rates or lump sum amounts, including that which results from an increase in the Guaranteed Maximum Price or extension of the Contract Time, Contractor shall afford access to Owner and its accountants and/or auditors at all reasonable times to any records, accounts, books, correspondence, subcontracts, purchase orders, proposals, instructions, receipts, vouchers, memoranda and records of any kind relating to the Project and the Work, all of which shall be maintained by the appropriate parties for a period of at least six (6) years from and after the date Owner makes final payment. Contractor shall make the same available within six (6) calendar days following notification to Contractor of Owner’s intent to audit. Contractor authorizes Owner to check directly with any subcontractors and suppliers of labor and material and equipment with respect to any item chargeable to Owner to confirm balances due and to obtain sworn statements and waivers of lien, all if Owner so elects and Contractor’s Subcontract shall require the Subcontractor to cooperate with Owner with respect to such information. This provision shall survive the termination of the Contract.

**ARTICLE 13**

**CLAIMS**

* 1. Claims for Extensions of the Contract Time. A “**Claim**” is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 13.1 does not require Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. Contractor shall not be entitled to any extension of time for delays resulting from any conditions or other causes unless it shall have given written notice to Owner in accordance with Section 16.4 of these General Conditions, within ten (10) calendar days following the commencement of each such condition or cause of the occurrence or delay.
     1. Contractor’s claims shall be made and submitted in writing within ten (10) calendar days of the service of the notice referenced in Section 13.1 and shall be supported by a CPM schedule analysis using what is commonly referred to as a contemporaneous or contemporaneous period schedule analysis to reflect impacts to the schedule utilizing contemporaneous schedule updates in conjunction with as-built facts to quantify schedule impacts, if any, and, applicable NOAA data if pertinent to the claim.
  2. Claims for Increases in the GMP.
     1. Except as otherwise provided in Section 12.2, no claim by Contractor for an increase in the Guaranteed Maximum Price shall be considered unless made in accordance with Section 13.2; and Section 13.2 shall not allow, nor be construed to allow, a claim otherwise disallowed by the Contract Documents. Contractor shall give Owner written notice in accordance with Section 16.4 of any claim not later than fifteen (15) calendar days after the occurrence of the event giving rise to the claim, but (except in the event of emergencies pursuant to Section 10.4) prior to the incurring of any expenses by Contractor. Failure to give such notice shall be deemed a complete waiver of Contractor’s claim. Contractor shall not proceed with the Work related to the claim without first receiving written authorization from Owner.
     2. Contractor’s claims shall be made and submitted in writing within ten (10) calendar days of the service of the notice referenced in Section 13.2.1 and shall identify the instructions or other circumstances that are the basis of the claim and shall set forth Contractor’s best current estimate of the dollar amount claimed. Failure to submit such claim within the time specified shall be deemed a complete waiver of Contractor’s claim. If the claim includes an element for increased compensation due to Delay, as defined in the Agreement, the requirements of Section 13.1.1 above shall apply. No claim shall be considered by Owner or the Architect/Engineer if Contractor has otherwise waived its rights to file a claim pursuant to the Contract Documents.
     3. If a claim for an increase in the Guaranteed Maximum Price or an extension of the Contract Time is presented to Owner by Contractor as herein provided, Owner and/or the Architect/Engineer, as applicable, may audit the books, correspondence, instructions, receipts, vouchers, memoranda and records of Contractor relating to the Work. Contractor shall make such books and records available within three (3) business days following notification to Contractor of Owner’s decision to audit or failing which Contractor’s claim shall be disallowed, and Contractor shall have no recourse on account of such disallowance. If necessary or if requested by Owner, Contractor shall obtain from its Subcontractors any documents necessary to complete said audit.
     4. Contractor acknowledges that the failure to notify Owner of any claim within the time required by Sections 13.1 and 13.2 will prejudice Owner’s ability to respond to such event, circumstance or occurrence and mitigate the cost and schedule impacts resulting from such event, circumstance or occurrence. Contractor agrees that no claims by Contractor shall be considered unless Contractor gives notice in strict accordance with Sections 13.1 and 13.2, otherwise Contractor agrees that such claims are knowingly waived.
  3. No Other Claims. The parties acknowledge that the provisions of Sections 13.1 and 13.2 are included herein solely for the purpose of fixing and limiting the time within which, and the manner in which, claims must be made; and that Sections 13.1 and 13.2 do not grant to Contractor any right to increases in the Guaranteed Maximum Price, or extensions in the Contract Time, not otherwise permitted or provided for by the other terms and provisions of the Contract Documents. A request for a Change Order in accordance with Article 12 is not a Claim. However, if Contractor desires to challenge the denial, in whole or in part, of a COR, such challenge is a Claim. Denial, in whole or part, of a COR submitted in accordance with Article 12 shall be deemed the occurrence of the event giving rise to a Claim for any adjustment of the Contract Sum or Contract Time sought in the COR but denied in whole or in part. If Contractor fails to provide a proper Claim in accordance with the terms herein and within the timeframe set forth above, Contractor’s entitlement to any increase in the Contract Sum or Contract Time, if any, shall be equitably reduced to the extent Owner is prejudiced by such failure to timely submit the Claim. Notwithstanding the foregoing, if Contractor fails to provide a proper Claim in accordance with the terms herein within thirty (30) days after the occurrence of the event giving rise to such Claim or within thirty (30) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later, then Contractor’s entitlement to any increase in the Contract Sum or Contract Time, if any, shall be conclusively waived.
  4. Consolidation or Joinder. In the event of any mediation, arbitration, or legal proceeding between Owner and any third party relating to the Project, Contractor agrees that Owner may join Contractor in any such proceedings and that Owner may consolidate any such proceedings with any proceeding between Contractor and Owner under this Contract. Contractor also agrees that Owner may make persons other than Owner and Contractor parties to any mediation, arbitration, or legal proceeding hereunder with respect to any claim, dispute or other matter in question arising out of the Project. Regardless of whether surety participates in the arbitration proceeding, it agrees to be bound by the arbitrator(s)’ decision and award, as if it had been named therein. If joined in the arbitration proceeding, surety hereby consents to arbitrate disputes arising under the Contract, the bond and/or the Work performed thereunder.

**ARTICLE 14**

**UNCOVERING AND CORRECTION OF WORK;**

**OWNER’S RIGHT TO CARRY OUT WORK**

* 1. Uncovering of Work.
     1. If any portion of the Work should be covered contrary to the request of Owner or the requirements of the Contract Documents, Contractor shall, if required by Owner, uncover it for Owner’s observation and replace it, all at Contractor’s expense without change in the Contract Time or the Guaranteed Maximum Price.
     2. Except as provided in Section 14.1.1, if any portion of the Work should be covered prior to a specific request for observation by Owner, Owner may request to see such Work, and it shall be uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents and without defect, the cost of uncovering the replacement shall be reimbursed by Owner. If such Work is found to be defective or not in accordance with the Contract Documents, Contractor shall bear such costs.
  2. Correction of Work.
     1. Owner shall have the authority to reject any portion of the Work which is defective or does not conform to the Contract Documents, and Contractor shall promptly correct all Work so rejected by Owner, whether observed before or after the date of Substantial Completion and whether or not fabricated, installed or completed. In order that such corrective work shall not interrupt or delay Owner’s schedule for completion of the Project or, if applicable, disturb the occupants of the completed Project or portions thereof, Contractor shall perform such work according to a schedule therefore established by Owner, utilizing in the performance thereof such manpower as is necessary to complete the corrective work in accordance with said schedule. Contractor shall bear all costs of correcting such rejected Work, including the compensation for any additional Architect/Engineering services, costs of testing and inspection, costs of uncovering and replacing Work, and costs of Owner’s other consultants services and expenses, made necessary thereby. Refusal to promptly correct all work rejected shall be grounds for default.
     2. In addition to any warranties set forth elsewhere in the Contract Documents, Contractor hereby warrants to Owner and Architect/Engineer that materials and equipment furnished under the Agreement will be of best quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to the requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Architect, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor further warrants that, for a period of one (1) year from the date of final acceptance of the Project, the Work is free from all defects due to faulty products or workmanship and that Contractor shall promptly make such corrections as may be necessary by reason of such defects. This one (1) year warranty is in addition to the warranties set forth and required of Contractor and all its Subcontractors, Sub-subcontractors and suppliers in the Florida Statutes and provided under Applicable Law. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work Owner, or its designee, successor, or assigns, will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments, or other work that may be made necessary by such defects, Owner may do so and charge Contractor the cost thereby incurred. The performance bond shall remain in full force and effect throughout the warranty period. Warranties and guarantees specified in the Agreement are in addition to manufacturer’s warranties and warranties implied by law. Contractor shall ensure that all warranties and guaranties are fully assignable to Owner and its successors and assigns. Neither this Section 14.2.2 nor any provision in the Agreement shall be held to limit Contractor’s liability for defects to less than the legal limit of liability in accordance with the laws of the state in which the Work is performed. Owner retains all rights to bring an action (in addition to action for a claim on any express warranty provided for herein) within the relevant statute of limitations for negligence, strict liability, breach of implied warranty and any other cause of action cognizable in the State of Florida.
     3. Contractor shall remove from the Job Site all Defective Work and not corrected under Section 5.4 or Sections 14.2.1 or 14.2.2 unless removal is waived by Owner.
     4. Contractor shall bear the cost of correcting destroyed or damaged construction of Owner or Separate Contractors (and any of Owner’s other structures or facilities), whether completed or partially completed, caused by Contractor’s correction or removal of Work that is not in accordance with the requirements of the Contract Documents.
     5. If Contractor does not remove such uncorrected defective or nonconforming Work within a reasonable time fixed by written instructions to that effect from Owner, Owner may correct it or remove it and store the materials and equipment at the expense of Contractor. If Contractor does not pay the cost of correction or removal and storage within ten (10) calendar days thereafter, Owner may, without waiving or foregoing other remedies, upon ten (10) calendar additional days written notification to Contractor, sell such materials and equipment at public or private sale and account to Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by Contractor, including compensation for additional Architect/Engineering services and attorneys’ fees made necessary thereby. If such proceeds of sale do not cover all costs which Contractor should have borne, the difference shall be offset against any amounts then or thereafter due to Contractor. If the amounts then or thereafter due to Contractor are not sufficient to cover such difference, Contractor shall, upon demand, pay the same to Owner. Owner is not required to sell such material and equipment before making demand upon Contractor but has the right to do so as provided herein. The obligations of Contractor under this Section 14.2.5 shall be in addition to, and not in limitation of, any obligations imposed on it under law, by any other provision of the Agreement or by any special warranty or guarantee under the Contract.
     6. If Contractor fails to correct any defective or nonconforming Work, Owner may correct it in accordance with this Article 14.
     7. Nothing contained in this Section 14.2 shall be construed to establish a period of limitation with respect to other obligations Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 14.2.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor’s liability with respect to Contractor’s obligations other than specifically to correct the Work.
  3. Owner’s Right to Carry Out the Work. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provisions of the Contract, and such default, neglect or nonperformance shall continue for a period of three (3) calendar days (or twenty-four (24) hours in the event threatening imminent harm to persons or damage to property) after written notification thereof from Owner (or if such default, neglect or nonperformance cannot be reasonably remedied within such three (3) calendar day (or twenty-four (24) hour) period, and Contractor does not (in the sole determination of Owner) undertake in good faith the remedy of the same within said period and thereafter proceed diligently to completion), then Owner may, without prejudice to any other remedy Owner may have, Owner may correct such deficiencies. Provided, however, that in the event of an emergency, as determined by Owner, no notification shall be required and Owner shall have the right to take possession of such portion of the Job Site as will enable it to make good such deficiencies and, in connection therewith, to utilize the materials, equipment, tools, construction equipment and machinery of Contractor located on the Job Site. Nothing herein shall require or impose upon Owner an obligation to correct the deficiencies. In the event Contractor has refused to correct the Work and Owner has exercised its right to carry out the Work and in so doing Contractor’s Subcontractor and/or Sub-subcontractors threaten or claim that their required warranty(s) was or will be voided or limited, because of Owner’s correction of the Work, Contractor shall in such case hereby fully assume and make good all warranty obligations to the extent the warranty of the Subcontractors or Sub-subcontractors is found to have been voided or nullified by an arbitration proceeding or a court of competent jurisdiction. If Owner makes good any such deficiencies, the costs of correcting the same, including compensation for additional Architect/Engineering services, Owner’s other consultants’ additional services, or third -party warranties made necessary by such default, neglect or nonperformance, shall be offset against any amounts then or thereafter due to Contractor. If the amounts then or thereafter due to Contractor are not sufficient to cover such costs, then Contractor shall, upon demand, pay the difference to Owner.
  4. Acceptance of Defective or Non-Conforming Work. If Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case the amount necessary to repair, replace or cure the defective or nonconforming Work in its entirety shall be offset against any amounts then or thereafter due to Contractor, or, if said amount of offset is determined after final payment (or if there is not then or thereafter due to Contractor an amount sufficient to cover the offset available to Owner), Contractor shall, upon demand, pay said amount to Owner.

**ARTICLE 15**

**TERMINATION OF THE CONTRACT**

* 1. Termination by Contractor. If Owner should, without notifying Contractor of its cause for doing so, fail or refuse to make payment of an undisputed amount owed to Contractor under the Contract Documents within the time period required by the Contract Documents, then Contractor shall have the right, as its sole and exclusive remedy under the Agreement and under Applicable Law and upon fourteen (14) calendar days prior written notice to Owner given pursuant to Section 16.4, to stop the Work until payment of the undisputed amount owing has been received. If Owner fails to cure the default by paying such undisputed amount to Contractor within thirty (30) additional days from the original notice, Contractor may deliver a second written notice to Owner stating that Owner’s failure to cure the default by paying such undisputed amount to Contractor within an additional fourteen (14) day period shall entitle Contractor to terminate the Contract, and if Owner fails to cure the default by paying such undisputed amount to Contractor within the additional fourteen (14) day period following Owner’s receipt of such second notice, Contractor may thereafter terminate the Agreement and recover from Owner payment for all Work executed and reimbursable costs incurred up to the date of termination (less any payments theretofore made to Contractor by Owner on account thereof) plus the earned portion of Contractor’s Fee as calculated in accordance with Paragraph 12.4.3 of the Agreement (less any payments theretofore made to Contractor by Owner on account thereof). If Owner shall cure its said defaults within such fourteen (14) day period, then Contractor’s notice of termination shall thereby be rendered ineffective, and the Agreement shall continue in full force and effect as if such defaults had not occurred. Prior to termination as aforesaid, Contractor shall not delay or suspend the Work in whole or in part.
  2. Termination by Owner for Cause.
     1. If Contractor is adjudged a bankrupt or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of Contractor’s insolvency, or if Contractor should refuse or fail or be unable for any reason, to make prompt payment to Subcontractors or for material or labor, or if Contractor should disregard Applicable Laws, ordinances, governmental orders or regulations or the instructions of Owner or the Architect/Engineer, or should Contractor cease to prosecute the Work diligently or if Contractor should otherwise violate or be in material default under any provision of the Contract Documents or of any other contract between Owner and Contractor, individually and collectively referred to herein as “**default**,” Owner may, without further notice, terminate the employment of Contractor, take possession of the Job Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by Contractor, accept assignment of those subcontracts that Owner elects to accept, and finish the Work by whatever method Owner may deem expedient and the surety, by issuance of a performance bond, incorporating this Agreement by reference, hereby consents to Owner commencing the Work, regardless of the express terms of the bond. In addition, without terminating the Agreement as a whole, Owner may, under any of the circumstances set forth above, terminate a portion of the Agreement (by reducing, in such manner as Owner deems appropriate, the Scope of the Work to be performed by Contractor) and complete the portion of the Agreement so terminated in such manner as Owner may deem expedient, taking possession of such part of the Job Site and utilizing such materials, equipment, tools, construction equipment and machinery owned by Contractor as may be necessary to accomplish the same. Contractor hereby grants to Owner the further right:

1. to enter upon any premises or property other than the Job Site in order to take possession of any documents, records, materials, tools, equipment, machinery or other items intended for incorporation in the Work (or any portion thereof) or for use in the performance thereof; and
2. to receive an assignment of such subcontracts as Owner deems necessary or desirable at the time of termination of the Agreement or a portion thereof.

Contractor’s failure to comply with any of its material obligations under the Agreement shall constitute a default and each and every default shall constitute justifiable grounds for Owner to terminate Contractor pursuant to Section 15.2.

* + 1. If the Agreement is terminated, in whole but not part, pursuant to Section 15.2.1, Contractor shall not be entitled to receive any further payment until the Work is completed, and Owner shall have the same right to retain monies owing to Contractor as it would have to retain such monies from and against final payments. Upon the completion of the Work, Owner shall make payment to Contractor, or Contractor shall reimburse Owner, as the case may be, as provided in this Section 15.2. Owner shall be entitled to collect from Contractor all damages to which Owner is entitled by law on account of Contractor’s default. If the costs of finishing the Work, including compensation for the Architect/Engineer’s services and expenses made necessary thereby, and other damages incurred by Owner and not expressly waived (collectively, “Completion Costs and Damages”), exceed the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner upon demand. Owner shall be entitled to hold all amounts due Contractor at the date of termination until all of Owner’s damages have been established, and to apply such amounts to such Completion Costs and Damages. If the unpaid balance of the Contract Sum exceeds the Completion Costs and Damages, such excess shall be paid to Contractor to the extent necessary to reimburse Contractor for Work properly executed by Contractor in accordance with the Contract Documents prior to termination. If a portion of the Agreement is terminated pursuant to Section 15.2.1, such termination shall not be treated as a reduction in the Scope of the Work pursuant to Article 12. Rather, in such event, Owner shall offset against any monies then or thereafter due to Contractor an amount determined by Owner to be adequate to cover all costs and expenses it will incur in performing, or causing to be performed, the portion of the Agreement so terminated. If Owner’s costs and expenses prove to be less than the amount offset, Contractor shall be entitled to the difference unless otherwise provided herein. If the amount then or thereafter due to Contractor is less than the amount to be offset and/or if Owner’s costs and expenses prove to exceed the amount offset, Contractor shall pay the difference to Owner upon demand, which obligation for payment shall survive the termination of the Contract. Owner shall have a retaining lien upon all Contractor’s materials, tools and appliances taken possession of, to secure the payment by Contractor of the monies due Owner.
    2. The remedies provided to Owner in this Section 15.2 are in addition to, and not in lieu of, any other rights or remedies available to Owner under the Contract Documents, at law or in equity. In the event of any breach of the Agreement by Contractor, and whether or not the Agreement is terminated by Owner, Contractor shall be liable for all damages, losses, costs and expenses, including attorneys’ fees, incurred by Owner as a result thereof, except as disallowed or limited hereunder.
  1. Termination by Owner Without Cause. Without limitation on the provisions of Section 15.2, Owner shall have the right at any time, to terminate the Agreement without cause and/or for Owner convenience. Upon receipt of such notice of termination, Contractor shall (i) forthwith discontinue the Work and remove its equipment and employees from the Job Site, (ii) take actions necessary, or that Owner may direct, for the protection and preservation of the Work, and (iii) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts except for the subcontracts, if any, that Owner elects to assume, terminate all purchase orders except for the purchase orders, if any, that Owner elects to assume, and enter into no further subcontracts and purchase orders. In the event of termination under this Section 15.3, Contractor shall have the right, as its sole and exclusive remedy under the Agreement or under Applicable Law, to recover from Owner payment for all Work executed (the basis for such payment shall be as provided in the Agreement) and reimbursable costs incurred up to the date of termination (less any payments theretofore made to Contractor by Owner on account thereof) and for any proven loss of reasonable profits earned on that portion of the Work executed prior to termination (less any payments theretofore made to Contractor by Owner on account thereof); provided, however, that in no event shall the amount recovered by Contractor from Owner as aforesaid exceed the Cost of the Work and Contractor’s Fee for Work completed through the date of termination. Contractor shall not be entitled to consequential or incidental damages, including, but not limited to, damages for loss of anticipated profits on Work not performed, on account of any termination pursuant to this Section 15.3. In addition, without terminating the Agreement as a whole, Owner may, for its convenience, terminate a portion of the Agreement (by reducing, in such manner as Owner deems appropriate, the Scope of the Work to be performed by Contractor), in which event such termination of a portion of the Agreement shall be treated as a reduction in the Scope of the Work pursuant to Article 12.
  2. In the event Owner shall terminate Contractor for cause and it is later determined through arbitration or litigation that the termination was improper or cause did not exist, then such termination shall be automatically converted to a termination for convenience, as described in Section 15.3 and Contractor’s sole remedy shall be limited to the recovery provided in Section 15.3.

**ARTICLE 16**

**MISCELLANEOUS PROVISIONS**

* 1. Governing Law.
     1. **THE CONTRACT DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA (WITHOUT GIVING EFFECT TO FLORIDA’S PRINCIPLES OF CONFLICTS OF LAW.**
     2. The parties agree that if any term, provision, covenant or condition of the Contract Documents or the application thereof to any person, entity or circumstance, shall to any extent be or be declared to be invalid or unenforceable, said invalid or unenforceable parts shall be modified to conform to Applicable Law , or if this would cause an illogical or unreasonable result, such provision shall be deemed stricken and the remainder of the Contract Documents or the application of such term, provision, covenant or condition to any other person, entity or circumstance shall not be affected thereby and each other term, provision, covenant or condition of the Contract Documents shall be valid and enforceable to the full extent permitted by law.
  2. Assignability; Successors and Assigns.
     1. The Agreement may be assigned by Owner; however, Owner will not thereby be discharged from the payment obligations provided herein, except as otherwise provided herein or agreed upon by Owner and Contractor. Contractor shall not assign the Agreement in whole or in part without the written consent of Owner, which consent Owner may withhold in its sole discretion (this prohibition shall not apply to subcontractors as permitted herein); nor shall the Agreement be assignable as a matter of law. Contractor shall not assign any monies due or to become due to it hereunder without the prior written consent of Owner. Notwithstanding the foregoing, if Owner transfers the Project, Owner shall have the right to assign the Contract Documents without the necessity of obtaining Contractor’s consent, and if the transferee (i) provides Contractor reasonable evidence that financial arrangements have been made to fulfill the transferee’s obligations under Contract Documents and (ii) agrees to assume all of Owner’s obligations under the Contract Documents, then Owner shall be released from all its obligations under the Contract Documents. Any assignment of the Contract Documents by Owner as provided herein shall not diminish, impair, or otherwise affect Contractor’s obligations under the Contract Documents, including Contractor’s warranty obligations, which shall be fully enforceable by Owner’s assignee.
     2. Owner and Contractor each binds itself and, to the extent permitted herein, its successors and assigns, to the other party and, to the extent permitted herein, the other party’s successors and assigns, in respect to all covenants, agreements and obligations contained in the Contract Documents.
     3. Financing for the Work, as well as certain expenses for the Project, may be provided by a financial institution (the “**Lender**”) pursuant to certain financing documents that have or will be executed (the “**Financing Documents**”). Contractor agrees that in the event of default by Owner under the Financing Documents Lender may elect to complete construction of the Project and Contractor will continue to perform all its obligations hereunder, provided that Lender (or its designee) performs Owner’s obligations hereunder first accruing from and after the date of such notification by the Lender, including payment of all amounts first coming due to Contractor in accordance with the Contract Documents from and after the date of such notification by the Lender. Contractor agrees to (1) comply with the requirements of any Lender which bear upon the performance of the Work, (2) make the site of the Work available at reasonable times for inspection by any Lender and/or its representatives, and (3) promptly furnish Owner with information, documents and materials that Owner may reasonably request from time to time in order to comply with the requirements of any Lender. Contractor shall consent to, and execute all documents reasonably requested by Owner in connection with, the assignment of the Contract and the Drawings and Specifications to any Lender for collateral purposes. As an express condition to Owner’s obligations hereunder, Contractor agrees to execute and deliver to Owner documents as may be reasonably required by such Lender or their agents provided such documents do not materially alter Contractor’s rights and obligations under the Contract for Construction. Contractor shall also: (1) make the site of the Work available at reasonable times for inspection by Owner’s Lender and their representatives upon reasonable prior notice; (2) consent to and execute all documents reasonably requested by Owner in connection with the assignment of this Agreement to its Lender for collateral purposes; (3) accept the cure by Owner’s Lender of any default of Owner under the Contract; (4) promptly furnish Owner with information, documents, and materials that Owner may reasonably request from time to time in order to comply with the requirements of its Lender; and (5) comply with the requirements of Owner’s Lender with respect to the schedule, budget, reimbursable costs, insurance, bonds, inspections, certifications, corrections, and other requirements that may be imposed as a condition to payments due hereunder. Without limitation of Owner’s other rights, Owner has the right to cease all Work on the Project for a period of up to seventy-two (72) hours in order to close on the construction loan with Owner’s Lender. In any such event, Contractor shall use its best efforts to comply with the requirements of Owner’s Lender and/or title company in order to close on the construction loan with Owner’s Lender. Such requirements may include, without limitation: (i) Contractor to identify all Subcontractors and suppliers, (ii) payment to each party in full for services rendered and materials furnished up to the time the Work ceased, (iii) waivers and releases of lien from each party for services rendered and materials furnished up to the time the Work ceased, (iv) recording of a Notice of Termination of Notice of Commencement, and (v) recording of a new Notice of Commencement following the recording of the mortgage or other security instruments from Owner’s Lender. To the extent Contractor has performed work or services for the Project before execution of the Agreement (such as any pre-construction value engineering, constructability reviews, cost estimating and similar services), all rights and liabilities of the parties for performance of the prior work and services are merged and included within and shall be governed by the terms and conditions of the Agreement. No compensation is due Contractor for any such work or services that has not been previously paid or provided for herein. Prior to final payment, Owner may, without consent of Contractor, assign the Agreement to a Lender, to an affiliate of Owner or to a transferee of all or substantially all of Owner’s interest in the Project, if the Lender, affiliate or transferee, as the case may be, assumes Owner’s rights and obligations under the Contract Documents. Contractor shall execute all consents reasonably required to facilitate the assignment. After final payment, Owner may assign the Contract and its rights under it, in whole or in part, without Contractor’s consent.
  3. Performance and Payment Bonds. Contractor shall provide bonds as set forth in Exhibit C – “Insurance Requirements”, and elsewhere in the Contract Documents. Contractor shall deliver the required bonds to Owner before the commencement of the Work.
  4. Notice. Any written notice required or provided for under the terms of the Contract Documents shall be made as provided in Article 17 of the Agreement. Owner and Contractor shall endeavor to include Architect/Engineer in, or promptly notify Architect/Engineer of, communications between them that relate to or affect Architect/Engineer’s services or professional responsibilities. Communications by and with Architect/Engineer’s consultants shall be through Architect. Communications by and with Subcontractors and suppliers shall be through Contractor. Communications by and with Separate Contractors shall be through Owner. The Contract Documents may specify other communication protocols.
  5. Liens-Indemnity. Provided that Owner makes payments in accordance with its obligations under the Contract Documents, Contractor expressly agrees to indemnify, defend and hold Owner harmless from any claim, loss, liability, settlement or damage of any nature, including reasonable attorneys’ fees incurred by Owner and arising as a result of any construction lien, equitable lien or other liens or notices of non-payment or bond claims or other claim therefor against Owner or Owner’s real property improved as part of the Work under the Agreement whether filed or maintained by any Subcontractor, Sub-subcontractor or any party other than Contractor providing labor, materials, services or equipment hereunder.
  6. Labor Performance. Contractor shall at all times supply a sufficient number of skilled workers to perform the Work covered by the Agreement with promptness and diligence. Should any of Contractor’s or Subcontractor’s or Sub-subcontractor’s workers performing Work covered by the Agreement engage in a strike or other work stoppage or cease to work due to picketing or a labor dispute of any kind, Owner may, at its option and without prejudice to any other remedies it may have, after five (5) calendar days written notice to Contractor, provide any such labor and deduct the cost thereof from any monies then due or thereafter to become due Contractor.
  7. Use of Owner’s Name. Neither Contractor nor its Subcontractors or Sub-subcontractors, by virtue of the Contract, shall acquire any right to use, and they shall not use, the name of Owner (either alone or in conjunction with or as a part of any other word or name) or any of Owner’s trademarks, service marks, copyrighted materials, or any other intellectual property of Owner or any of its related, affiliated or subsidiary companies: in any advertising, publicity or promotion; to express or imply any endorsement of their respective work or services; or, except to the extent necessary to enable Contractor to perform the Work or any Subcontractor or Sub-subcontractor to perform its portion thereof, in any other manner (whether or not similar to the foregoing uses).
  8. Confidentiality. The Project and all matters relating thereto, including any discussions between Owner and Contractor shall be treated as confidential by Contractor and Contractor’s employees. Without prior written approval of Owner, Contractor and Contractor’s employees shall not discuss the Project or their relationship thereto with any branch of the media or with any third party nor shall they furnish any written materials, photographs, plans or sketches relating to the Project to any such media entity or third party.
  9. General.
     1. The captions of divisions, sections, articles, paragraphs, subparagraphs, clauses and the like in the Contract Documents are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the divisions, sections, articles, paragraphs, subparagraphs, clauses and the like.
     2. Unless otherwise specified, article, paragraph and subparagraph references appearing in these General Conditions are to articles, paragraphs, and subparagraphs herein.
     3. Wherever the Agreement obligates either party hereunder to reimburse the other or others for attorneys’ fees, such obligation shall not only include attorneys’ fees incurred in litigation in the trial court but also all attorneys’ fees incurred in connection with any and all appellate proceedings, no matter to which court any appeal is taken and by whomever so taken and all mediations and arbitrations held pursuant to Article 16 of the Agreement and Section 18.1 below.
     4. All representations, guarantees, indemnity, arbitration, and warranty provisions set forth in the Contract Documents, as well as any continuing obligations indicated as such in the Contract Documents, shall survive the expiration or sooner termination of the Contract Documents. To the fullest extend allowed by law, wherever the Contract Documents obligates Contractor to indemnify Owner, such obligation shall be construed to include an obligation to indemnify and defend all its parent company, the related, affiliated and subsidiary companies of the other Owner Indemnitees each and the owners, shareholders, members, managers, officers directors, agents, employees and assigns of each, whether or not the Contract Documents specifically so states. Wherever the Contract Documents obligates Contractor to defend an indemnified party, such obligation shall take force upon the indemnified party’s tender of its defense.
     5. Unless otherwise specifically provided herein, Owner may withhold any consents or approvals to be given by it pursuant to the Agreement in its sole discretion.
     6. It is acknowledged by the parties that the Agreement was competitively bid and/or bargained for and entered into as an arms-length business transaction. Contractor further acknowledges that it has read and understands the terms and conditions of the Contract.

**ARTICLE 17**

**EMPLOYMENT/CONTRACTING PRACTICES**

* 1. Contractor’s and Subcontractors’ Employment Practices. Contractor shall comply with the following practices in its performance of the Work:
     1. With regard to its employment practices, Contractor agrees that neither Contractor nor any of its Subcontractors or Sub-subcontractors shall discriminate against any employee, applicant for employment or group of people on the basis of race, religion, color, sex, age, physical condition or national origin, except where sex or absence of physical restrictions is a bona fide occupational qualification. Contractor shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex, age, physical condition, or national origin. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.
     2. With regard to its third-party contracting practices, Contractor agrees that it will not discriminate against any person, group of people or firm based upon race, religion, color, sex, age, physical condition or national origin.
     3. Contractor and its Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, physical condition or national origin.

**ARTICLE 18**

**ATTORNEYS’ FEES**

18.1 In any suit, action, or other proceeding, including trial, arbitration or bankruptcy, arising out of or in any manner relating to this Contract or the Contract Documents, including: (a) the enforcement or interpretation of either party’s rights or obligations under this Contract or the Contract Documents, whether in contract, tort, or both, or (b) the declaration of any rights or obligations under this Contract or the Contract Documents, the prevailing party shall be entitled to recover from the losing party Attorneys’ Fees. For purposes of this Paragraph 18.1, “**Attorneys’ Fees**” shall mean all reasonable fees and disbursements (including disbursements that would not otherwise be taxable as costs in the proceeding) which are incurred by a party, including all experts’, legal assistants’, paralegals’, and law clerks’ fees, incurred through trial and all post award or judgment and appellate levels.

**ARTICLE 19**

**CONSTRUCTION LIENS**

19.1 Contractor shall and hereby does subordinate any and all liens, rights, and interests (whether choate or inchoate, contractual or statutory, owned, claimed, or held, or to be owned, claimed, or held by Contractor as to any part of the Work or the site, to the liens securing payments of sums now or hereinafter borrowed by Owner in connection with the development, design, and/or construction of the Project.

19.2 At the request of Owner, Contractor shall execute such additional documents as may be requested from time to time by Owner to give effect to the provisions hereof and shall cause its Subcontractors and other parties furnishing labor or materials for the Work under Contractor to subordinate their liens to the aforesaid sums.

(END OF GENERAL CONDITIONS)